

No. 12302

United States
Court of Appeals
For the Ninth Circuit.

CAPITAL SERVICE, INC., a Corporation,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

DEC 9 1943

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

HYMAN SMITH, ESQ.,*

CHARLES M. WALKER, ESQ.,*

JAMES L. WOOD, ESQ.,*

HYMAN SMITH, ESQ.

*Withdrawn.

For Respondent:

R. E. MAIDEN, ESQ.

Docket No. 13562

CAPITAL SERVICE, INC., a corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1947

Apr. 17—Petition received and filed. Taxpayer notified. Fee paid.

Apr. 18—Copy of petition served on General Counsel.

May 28—Answer filed by General Counsel.

May 28—Request for hearing in Los Angeles filed by General Counsel.

June 3—Notice issued placing proceeding on Los Angeles calendar. Service of answer and request made.

1948

Feb. 13—Hearing set April 26, 1948 at Los Angeles, California.

May 5,—Hearing had before Judge Arnold on 6, 11, merits. Petitioner's motion to file amended petition—no objection by respondent—granted. Respondent's motion to file amended answer thereto—granted. Permission given to conform duplicate stipulation. Leave granted to counsel for respondent to withdraw exhibits and substitute photostats. By agreement of coun-

1948

sel the income tax returns of Gas Fuel Service Co. from 1936 to 1940 be supplied and marked Exhibits EE to II inclusive. Stipulation of facts, amended petition and amended answer filed at hearing. Appearance of Charles M. Walker and James L. Wood as counsel filed. Briefs due 6/21/48—replies 7/21/48.

May 28—Transcript of hearing of May 5, 1948 filed.

May 28—Transcript of hearing of May 6, 1948 filed.

May 28—Transcript of hearing of May 11, 1948 filed.

June 14—Motion for extension to July 31, 1948 to file opening briefs and August 30, 1948 to file reply briefs filed by General Counsel. 6/15/48 granted.

June 30—Brief filed by taxpayer. 8/2/48 copy served.

June 30—Brief filed by General Counsel.

Aug. 2—Motion to correct transcript of record filed by taxpayer. Granted.

Aug. 24—Reply brief filed by taxpayer. 8/25/48 copy served.

1949

May 10—Memorandum findings of fact and opinion rendered, Arnold, J., Decision will be entered for respondent. 5/10/49 copy served.

May 12—Decision entered, Arnold, J., Div. 12.

June 15—Motion to withdraw Joseph D. Brady, Walter L. Nossaman and Charles M. Walker as counsel and appearance of Hy-

1949

man Smith as counsel for taxpayer filed—
granted.

June 15—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by taxpayer.

June 15—Designation of record filed by taxpayer with affidavit of service thereon.

June 20—Affidavit of service of petition for review filed.

June 29—Motion to withdraw James L. Wood as counsel and to substitute Hyman Smith in his place filed by taxpayer—granted.

The Tax Court of the United States
Docket No. 13562

CAPITAL SERVICE, INC., a corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency LA:IT:90D:PAK, dated January 30, 1947, and as a basis of this proceeding alleges as follows:

1. Petitioner is a California corporation, incorporated under the laws of the State of California under date of April 23, 1936, with its principal office at 510 South Spring Street, Los Angeles 13,

California. Consolidated returns for Capital Service, Inc., and A. & W. Baking Company (name changed to Danish Maid Bakery) for the period herein involved were filed with the Collector of Internal Revenue for the Sixth District of California.

2. The Notice of Deficiency, a copy of which is attached and marked "Exhibit A," was mailed to petitioner on January 30, 1947.

3. The tax in controversy is Income Tax for the year 1943, as follows:

Liability	\$7,358.10
Assessed	None
Deficiency	\$7,358.10

4. The determination of tax set forth in said notice of deficiency is based upon the following error:

The disallowing of a net operating loss carry-over from the taxable year ended December 31, 1942, in an amount of \$27,492.98.

The Tax Court has jurisdiction in the above matter under Section 272 of the Internal Revenue Code.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

The consolidated return as filed for the taxable year ended December 31, 1943, resulted in a net loss of \$23,012.20. One of the deductions included in said return was the net operating loss carry-over of Capital Service, Inc., of \$27,492.98, which was the amount of the loss as disclosed by the return

filed for the taxable year ended December 31, 1942. The loss as shown by the return of Capital Service, Inc., for its fiscal year ended December 31, 1942, was adjusted by the Examining Agent disallowing as a deduction a bad debt and stock loss occurring during the year 1942, in the amount of \$32,867.81. The adjustment disallowing the loss in the year 1942 resulted further in the elimination of the net operating loss carry-over to the year 1943. The amount of \$32,867.81 disallowed by the Examining Agent for the taxable year ended December 31, 1942, was made up as follows:

Investment in 1,050 shares of capital stock of the Central California Utilities Corporation	\$ 1,300.00
Net amount due for moneys advanced to Central California Utilities Cor- poration and carried upon the books and records of Capital Service, Inc. as an account receivable	31,567.81
Total	<hr/> \$32,867.81

The principal asset of the Central California Utilities Corporation was the ownership of all of the capital stock of the Gas Fuel Service Company, which company had a franchise for the transmission and distribution of gas in specified portions of Fresno and Kings Counties, State of California, this franchise being an exclusive franchise granted by the Railroad Commission of the State of Cali-

fornia. The aforementioned franchise from the State Railroad Commission was cancelled by the Railroad Commission of the State of California on October 6, 1942 (Railroad Commission Order No. 35825). Upon the loss of the franchise the investment of Central California Utilities Corporation in the Gas Fuel Service Company became worthless; likewise, the investment of and advances by Capital Service, Inc. to and in Central California Utilities Corporation became worthless.

Petitioner expects to prove that at all times the principal asset of the Central California Utilities Corporation was the ownership of the stock of the Gas Fuel Service Company; that the value of the stock of the Gas Fuel Service Company was the value that could be attributed to the exclusive franchise from the State Railroad Commission for the transmission and distribution of gas in the portions of Fresno and Kings Counties; that up to the time immediately preceding the loss of the franchise the company had various plans for the utilization of the franchise, either through the merger with other interests or through its sale to others; that at no time prior to the cancellation of the franchise by the Railroad Commission had the loss been ascertained, and petitioner expects to prove that the loss was occasioned solely and by virtue of the cancellation of the exclusive franchise owned by the Gas Fuel Service Company.

Wherefore, petitioner prays that this Court may hear the proceedings and approve the net operating

loss carry-over from the taxable year ended December 31, 1942, in arriving at the net taxable income for the taxable year ended December 31, 1943.

April 16, 1947, Los Angeles, California.

CAPITAL SERVICE, INC.

[Corporate Seal]

By /s/ F. E. DENT,
Secretary,
Petitioner.

/s/ HYMAN SMITH,
Attorney for Petitioner.

State of California,
County of Los Angeles—ss.

F. E. Dent, being duly sworn, says: That he is Secretary of Capital Service, Inc., the petitioner above named; that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true except those stated to be upon information and belief, and that those he believes to be true.

/s/ F. E. DENT.

Subscribed and sworn to before me this 16th day of April, 1947.

[Seal] /s/ MYRTLE M. MATTHEWS,

Notary Public in and for the County of Los Angeles, State of California.

EXHIBIT A

Form 1279

SN-IT-7

Office of Internal Revenue Agent in Charge
Los Angeles Division
LA:IT:90D:PAK

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

January 30, 1947

Capital Service, Inc.
510 South Spring Street
Los Angeles 13, California

Gentlemen:

You are advised that the determination of your income tax liability and that of your affiliated company for the taxable year ended December 31, 1943 discloses a deficiency of \$7,358.10, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed forms and forward it to the Internal Revenue Agent in Charge, Los Angeles, California for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent
in Charge.

PAK:bl

Enclosures:

Statement

Form of waiver

Statement

LA:IT:90D:PAK

Capital Service, Inc.
 510 South Spring Street
 Los Angeles 13, California

Returns Examined

	Form	Year
Capital Service, Inc.		
Los Angeles, California.....	1120	1943
Subsidiary Company:		
A and W Baking Company.....	1122	1943
(Name changed to Danish Maid Bakery)		
Los Angeles, California		

Income Tax Liability of Capital Service, Inc., and Each Subsidiary Company Above Named, as Provided in Section 23.15 of Regulations 104, Prescribed Under Section 141(b) of the Internal Revenue Code, for the Taxable Year Ended December 31, 1943.

Year	Liability	Assessed	Deficiency
1943 Income Tax.....	\$7,358.10	\$	\$7,358.10

In accordance with section 23.16 of Regulations 104 the deficiency shown above will be assessed severally against each corporation named above.

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated May 9, 1945 to your protest dated July 2, 1945 and to the statement made at conferences held.

A copy of this letter and statement has been mailed to your representative, Mr. Harry W. Moore, 215 West Seventh Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

Adjustments to Net Income
Taxable Year Ended December 31, 1943

Consolidated net income as disclosed by return (loss).....(\$23,012.20)

Unallowable deductions:

Capital Service, Inc.

(a) Net operating loss deduction	
disallowed	\$27,492.98

A and W Baking Company

(Name changed to Danish Maid Bakery)

(b) Wages and salaries disallowed.....	1,500.00	
(c) Reserves disallowed	12,557.08	
(d) Accrued Interest	957.36	
(e) Adjustment to net operating loss		
deduction	13,023.82	55,531.24

Total	\$32,519.04	
-------------	-------------	--

Additional deductions:

(f) Mathematical error	\$ 270.00	
------------------------------	-----------	--

Capital Service, Inc.

(g) Depreciation	1,647.42	
(h) Interest	758.10	

A and W Baking Company

(i) Taxes	4,193.74	
(j) Depreciation	453.23	7,322.49

Consolidated net income adjusted.....	\$25,196.55	
---------------------------------------	-------------	--

Explanation of Adjustments

(a) The net operating loss deduction claimed by Capital Service, Inc., in the amount of \$27,492.98, representing a net operating loss carryover from the taxable year ended December 31, 1942, is disallowed. It has been determined that, for the taxable year ended December 31, 1942, you had a net income, exclusive of net operating loss deduction, of \$1,271.30 as shown in the following:

Net loss of Capital Service, Inc., as disclosed by return for taxable year ended 12/31/42.....(\$27,492.98)

Unallowable deduction:

(1) Bad debt and loss on stock disallowed..... 32,867.81

Total \$ 5,374.83

Additional deductions:

(2) Depreciation\$2,653.29

(3) Interest 1,450.24 4,103.53

Net income adjusted (excluding net operating loss deduction) \$ 1,271.30

Explanation

(1) Deductions claimed on your 1942 return in the amounts of \$31,567.81 and \$1,300.00, representing an alleged bad debt and an alleged loss on stock, respectively, have been disallowed since such amounts do not constitute allowable deductions under section 23 of the Internal Revenue Code.

(2) A deduction is allowed for depreciation, not previously claimed by you, in the amount of \$2,653.29.

(3) A deduction is allowed for interest, not previously claimed by you, in the amount of \$1,450.24.

(b) It has been determined that wages and salaries in the amount of \$1,500.00 were paid in contravention of the Emergency Price Control Act of October 2, 1942. The deduction claimed with respect to such wages and salaries is disallowed.

(c) The deductions claimed for reserve for bank account, \$3,057.08, and reserve for officer's salary adjustment, \$9,500.00, or a total of \$12,557.08 are disallowed as not representing proper deductions for this taxable year under section 23 of the Internal Revenue Code.

(d) It is determined that the correct deduction for interest, under section 23(b) of the Internal Revenue Code, is the amount of \$2,704.07 instead of the amount claimed, \$3,661.43, or a decrease of \$957.36.

(e) The net operating loss deduction of \$21,705.81 claimed by A and W Baking Company as a net operating loss carryover from the taxable year ended December 31, 1942 is disallowed. It has been determined that that corporation had a net income (exclusive of net operating loss deduction) of \$5,685.22 for that taxable year as shown in the following:

Net loss as disclosed by return for taxable year		
ended December 31, 1942.....		(\$21,705.81)
Unallowable deductions:		
(1) Net operating loss deduction		
excluded	\$25,563.53	
(2) Wages and salaries disallowed..	1,500.00	
(3) Interest	697.21	
(4) Excessive depreciation	255.29	28,016.03
Total		\$ 6,310.22
Additional deduction:		
(5) Capital stock tax.....		625.00
Net income (exclusive of net operating loss		
deduction)		\$ 5,685.22

Explanation

(1) For the purpose of computing a net operating loss carryover a deduction for net operating loss deduction is not allowable. Section 23.31(d) (1)(ii) of Regulations 104 prescribed by section 141(b) of the Internal Revenue Code.

(2) It is determined that salaries and wages in the amount of \$1,500.00 were paid in contravention

of the Emergency Price Control Act of October 2, 1942. The deduction claimed with respect to such wages and salaries is disallowed.

(3) It is determined that the correct deduction for interest, under section 23(b) of the Internal Revenue Code, is the amount of \$1,483.95 instead of the amount claimed, \$2,181.16, or a decrease of \$697.21.

(4) It is determined that a reasonable allowance for depreciation, under section 23(l) of the Internal Revenue Code, is the amount of \$1,868.16 instead of the amount claimed, \$2,123.45, or a decrease of \$255.29.

(5) A deduction is allowed for capital stock tax, not previously claimed, in the amount of \$625.00.

In lieu of the net operating loss deduction claimed by A and W Baking Company in the amount of \$21,705.81 as shown above, it is determined that the correct amount of net operating loss deduction, representing a net operating loss carryover from the taxable year ended December 31, 1941, is \$8,681.99, or a decrease of \$13,023.82.

(f) A mathematical error was made in addition of items of deductions on your return. The correct total of deductions appearing in items 16 to 29, inclusive, is \$145,848.52 instead of the amount, \$145,578.52, shown in item 30 of your return, or an increase of \$270.00. The return does not indicate to which corporation this difference is applicable.

(g) A deduction is allowed for depreciation, not previously claimed, in the amount of \$1,647.42.

(h) A deduction is allowed for interest, not previously claimed, in the amount of \$758.10.

(i) It is determined that the correct deduction for taxes is the amount of \$13,275.66 instead of the amount claimed, \$9,081.92, or an increase of \$4,193.74.

(j) An additional deduction is allowed for depreciation in the amount of \$453.23 in accordance with section 23(l) of the Internal Revenue Code.

Computation of Income Tax

Taxable Year Ended December 31, 1943

Consolidated net income adjusted.....	\$25,196.55	
Consolidated normal-tax net income.....	25,196.55	
Consolidated surtax net income.....	25,196.55	
Income tax:		
Normal tax:		
Tax on \$25,000.00.....	\$4,250.00	
31% of \$ 196.55.....	60.93	\$ 4,310.93
		<hr/>
Surtax:		
12% of \$25,000.00.....	\$3,000.00	
24% of \$ 196.55.....	47.17	3,047.17
		<hr/>
Correct income tax liability.....	\$ 7,358.10	
Income tax assessed:		
Original, account No. NC-851416.....		<hr/>
Deficiency of income tax.....	\$ 7,358.10	

Received and filed April 17, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the

above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the tax in controversy is Income Tax for the year 1943; denies the remainder of the allegations contained in paragraph 3 of the petition.

4. Admits that the Tax Court has jurisdiction in the above matter under Section 272 of the Internal Revenue Code, but denies all other allegations contained in paragraph 4 of the petition.

5. Denies all allegations of fact contained in paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL, ECC
Chief Counsel,
Bureau of Internal
Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

Received and filed May 28, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

REQUEST FOR DESIGNATION OF
PLACE OF HEARING

Now comes the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and in accordance with Rule 26 of the Court's Rules of Practice,

Requests that the Court designate that the hearing in the above-entitled proceeding be held at Los Angeles, California, or vicinity, in order to afford the respective parties an opportunity to produce evidence at the trial with a minimum expense.

/s/ J. P. WENCHEL, ECC

Chief Counsel,

Bureau of Internal

Revenue.

Of Counsel:

B. H. NEBLETT,

E. C. CROUTER,

B. M. COON,

Special Attorneys,

Bureau of Internal Revenue.

Received and filed May 28, 1947, T.C.U.S.

[Title of Tax Court and Cause.]

NOTICE OF PLACE OF HEARING

Notice is hereby given that the above entitled proceeding has been placed upon the Los Angeles, Calif., calendar of the Court for hearing on the

merits in due course either in the city named or in the vicinity thereof.

This notice refers only to the place of hearing and not to the time. The parties will be notified in due course of the exact time and place of hearing on the merits.

If either party desires that the hearing on the merits be held at some place other than the place above named, he must so notify the Court within 30 days from the date of this notice, and name the place he prefers. The Court will consider any requests filed as above provided, and if it decides that the place of hearing should be changed, it will so notify the parties.

Service of answer and request is hereby made.

/s/ VICTOR S. MERSCH,

Clerk.

To:

HYMAN SMITH, ESQ.,
812 Chester Williams Bldg.,
215 West Fifth St.,
Los Angeles 13, Calif.

[Title of Tax Court and Cause.]

NOTICE OF SETTING PROCEEDING FOR
HEARING—CIRCUIT CALENDAR

Take Notice that a Division of The Tax Court of the United States will sit in Room 229, U. S. Post Office & Court House beginning April 26, 1948. Los Angeles, Calif.

Hearing will be held in all proceedings shown on

the attached list. The list will be called promptly at 10:00 a.m., as indicated, and you will be expected to answer the call at that time and be prepared for trial when reached. No continuance will be granted except for extraordinary cause. Failure to appear will be taken for cause for dismissal in accordance with the Rules of Practice, and you are in all other respects expected to be familiar with such rules.

Respectfully,

/s/ VICTOR S. MERSCH,

Clerk.

To:

HYMAN SMITH, ESQ.,

812 Chester Williams Bldg.,

215 West Fifth St.,

Los Angeles 13, Calif.

[Title of Tax Court and Cause.]

MOTION FOR LEAVE TO FILE IN
AMENDED PETITION

Comes now petitioner and asks leave of the Court to file an amended petition herein.

May 5, 1948.

/s/ CHARLES M. WALKER,

Counsel for Petitioner.

Filed at May 5, 1948, T.C.U.S.

Granted May 5, 1948.

/s/ WILLIAM W. ARNOLD,

Judge.

[Title of Tax Court and Cause.]

AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency LA:IT:90D:PAK, dated January 30, 1947, and as a basis of this proceeding alleges as follows:

1. Petitioner is a California corporation, incorporated under the laws of the State of California on April 23, 1936, with its principal office at 510 South Spring Street, Los Angeles 13, California. Consolidated returns for the affiliated group consisting of Capital Service, Inc., the parent, and A. & W. Baking Company (name changed to Danish Maid Bakery), the subsidiary, for the taxable years 1942 and 1943 were properly filed with the Collector of Internal Revenue for the Sixth District of California by petitioner as the parent corporation.

2. The Notice of Deficiency, a copy of which is attached to the Petition on file herein and marked "Exhibit A" thereto, was mailed to petitioner on January 30, 1947.

3. The taxes in controversy are Income Taxes for the taxable year ended December 31, 1943 in the full amount of the asserted deficiency of \$7,358.10.

4. The determination of deficiency in tax set forth in said notice of deficiency is based upon the following errors:

(a) Respondent erred in determining that the petitioner, Capital Service, Inc., did not sustain any

net operating loss in 1942 which could be carried over as a part of a consolidated net operating loss deduction of the affiliated group for 1943.

(b) Respondent erred in failing to allow deduction of \$2,752.49 by petitioner from its consolidated 1943 income, representing a net operating loss for 1941 of Capital Service, Inc., carried over into 1943.

(c) Respondent erred in determining that, for the taxable year ended December 31, 1942, petitioner, Capital Service, Inc., had a net income, exclusive of net operating loss deduction, of \$1,271.30, and in failing to determine that, for said year, petitioner, Capital Service, Inc., sustained a net operating loss of \$31,596.51 within the meaning of Section 122(a), I. R. C.

(d) Respondent erred in determining that a deduction claimed on the consolidated 1942 return of petitioner in the amount of \$31,567.81, representing a debt which became worthless in 1942, did not constitute an allowable deduction in 1942 under Section 23 of the Internal Revenue Code.

(e) Respondent erred in determining that a deduction claimed in the consolidated 1942 return of petitioner in the amount of \$1,300.00, representing a loss which was sustained in 1942, upon the worthlessness of stock, did not constitute an allowable deduction for 1942 under Section 23 of the Internal Revenue Code.

(f) Respondent erred in determining that, for the taxable year ended December 31, 1943, there was a deficiency in income tax of \$7,358.10 or of any sum whatsoever.

5. The facts upon which petitioner relies as a basis for this proceeding are as follows:

(a) In 1940 and 1941, Capital Service, Inc., and its subsidiary A. & W. Baking Company (name changed to Danish Maid Bakery, and hereinafter referred to as the Bakery) each filed an income tax return. In 1940, the Bakery sustained a net operating loss of \$17,846.84. In 1940, Capital Service, Inc., hereinafter referred to as petitioner, sustained a net operating loss of \$7,082.40. In 1941, the Bakery sustained a net operating loss of \$8,681.99. In 1941, petitioner sustained a net operating loss of \$2,752.49.

(b) In 1942 and 1943, Capital Service, Inc. and the Bakery filed consolidated returns. In 1942, the Bakery had a net income, exclusive of a net operating loss deduction, of \$5,685.22. In 1942, a net operating loss of \$27,492.98, was reported for petitioner, Capital Service, Inc. In arriving at said loss, petitioner deducted upon the grounds of worthlessness: (1) an indebtedness of \$31,567.81 owed to petitioner by Central California Utilities Corporation. (2) The \$1,300.00 adjusted basis to petitioner of 1,050 shares of Central California Utilities Corporation. The aggregate deduction thus taken by petitioner was \$32,867.81. In the deficiency notice herein, respondent disallowed said deduction of \$32,867.81 and determined that, with \$4,103.53 of deductions not claimed by petitioner for 1942 but allowed by respondent, petitioner's adjusted net income for 1942, excluding net operating loss deductions, was \$1,271.30. If petitioner was correct

in deducting the aforesaid \$32,867.81 from 1942 income, then there was a consolidated net operating loss in 1942 of \$31,596.51, being the \$27,492.98 shown on the return, plus \$4,103.53 additional deductions allowed by respondent.

(c) In the 1943 consolidated return, the consolidated net income, exclusive of a net operating loss deduction, was reported to be \$26,186.59. In the deficiency notice herein, respondent has increased said income by \$7,691.95 to \$33,878.54. Net operating losses of petitioner and the Bakery carried over from 1941 and 1942 reduce the said income to zero.

(d) At all times prior to January 1, 1942, the indebtedness owed by the Central California Utilities Corporation to petitioner and petitioner's 1,050 shares of stock in Central California Utilities Corporation were not worthless, and they became worthless during 1942. The reason that no worthlessness occurred prior to January 1, 1942 was that Central California Utilities Corporation owned all the issued and outstanding capital stock of Gas Fuel Service Company and the corporation last named held an exclusive right from the State of California for the transmission and distribution of gas in Kings and Fresno Counties, California. This exclusive right was kept alive by Gas Fuel Service Company as long as the Company believed that there were potentially profitable operations which could be undertaken which would inure to the benefit of the creditors and stockholders of Central California Utilities Corporation. When the Company

determined that such operations could not be undertaken it ceased from its activities which had kept the right alive and permitted the right to be revoked. Said right was held by Gas Fuel Service Company at all times from August 28, 1933, until October 6, 1942, when it was revoked.

Wherefore, petitioner prays that this Court determine that there is no deficiency in income tax, and grant such other and further relief as may be equitable in the premises.

May 5, 1948, Los Angeles, California.

/s/ JOSEPH D. BRADY,

/s/ JOHN O. PAULSTON,

/s/ CHARLES M. WALKER.

State of California,
County of Los Angeles—ss.

M. B. Price, being duly sworn, says:

That he is Vice-President of Capital Service, Inc. the petitioner above named; that he is duly authorized to verify the foregoing amended petition; that he has read the foregoing amended petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true except those stated to be information and belief, and that those he believes to be true.

/s/ M. B. PRICE.

Subscribed and sworn before me this 4th day of May, 1938.

[Seal] /s/ HYMAN SMITH,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires April 25, 1950.

Filed May 5, 1948, T.C.U.S.

[Title of Tax Court and Cause.]

ANSWER TO AMENDED PETITION

1 to 3, inclusive. Admits the allegations contained in paragraphs 1 to 3, inclusive, of the amended petition.

4(a) to (f), inclusive. Denies the allegations of error contained in subparagraphs (a) to (f), inclusive, of paragraph 4 of the amended petition.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the amended petition.

(b). Admits the allegations contained in subparagraph (b) of paragraph 5 of the amended petition except that respondent denies that there would be a consolidated net operating loss in 1942 of \$31,596.51 even if the Court should decide in favor of petitioner on the worthlessness issue.

(c). Denies the allegations contained in subparagraph (c) of paragraph 5 of the amended petition.

(d). Denies the allegations contained in sub-

paragraph (d) of paragraph 5 of the amended petition.

6. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT, ECC
Chief Counsel,
Bureau of Internal
Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
R. E. MAIDEN, JR.,
Special Attorneys,
Bureau of Internal Revenue.

Copy served.

Filed May 6, 1948, T.C.U.S.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated that the following are facts in this case. Either party shall be at liberty to introduce any proper evidence relevant to any of

the issues in the case not inconsistent with the facts herein stipulated.

1. Capital Service, Inc. is a California corporation, formed April 23, 1936.

2. For 1940 and 1941, Capital Service, Inc., and its subsidiary A. & W. Baking Company (name changed to Danish Maid Bakery, and hereinafter referred to as the Bakery) each filed an income tax return. In 1940, the Bakery sustained a net operating loss of \$17,846.84. In 1940, Capital Service, Inc. sustained a net operating loss of \$7,082.40. In 1941, the Bakery sustained a net operating loss of \$8,681.99. In 1941, Capital Service, Inc. sustained a net operating loss of \$2,752.49.

3. For 1942 and 1943, Capital Service, Inc. and the Bakery filed consolidated returns. In 1942, the Bakery had a net income, exclusive of a net operating loss deduction, of \$5,685.22. In the 1942 consolidated return, a net operating loss of \$27,492.98 was reported for Capital Service, Inc. In arriving at said loss, Capital Service, Inc. deducted upon the grounds of worthlessness: (1) an indebtedness of \$31,567.81 owed to it by Central California Utilities Corporation, (2) the \$1,300.00 adjusted basis to Capital Service, Inc. of 1,050 shares of Central California Utilities Corporation. The aggregate deduction thus taken by Capital Service, Inc. in 1942 with reference to the above two items was \$32,867.81. In the deficiency notice herein, respondent disallowed said deduction of \$32,867.81, and determined that, with \$4,103.53 of deductions not claimed by

Capital Service, Inc. for 1942 but allowed by respondent, the adjusted net income of Capital Service, Inc. for 1942, excluding net operating loss deductions, was \$1,271.30.

4. None of the income reported on the 1943 consolidated return of Capital Service, Inc. and the Bakery represented income of Capital Service, Inc.

5. Central California Utilities Corporation, a California corporation, was formed August 3, 1936 for the purpose of taking over the assets and liabilities of the Inland Public Service Company. Continuously after some time in 1933, and prior to the formation of Central California Utilities Corporation in 1936, the Inland Public Service Company owned all of the issued and outstanding stock of Gas Fuel Service Company and Kettleman Lakeview Oil and Gas Co., Ltd. The primary function of Kettleman Lakeview Oil and Gas Co., Ltd. was to own gas producing wells and leases upon which such wells could be drilled, and to produce gas for sale. The primary purpose of Gas Fuel Service Company was to buy gas from Kettleman Lakeview Oil and Gas Co., Ltd. and others and distribute it for sale to customers in Kings and Fresno Counties, California.

6. The acquisition by Central California Utilities Corporation of all of the issued and outstanding shares of Gas Fuel Service Company and of Kettleman Lakeview Oil and Gas Co., Ltd. from Inland Public Service Company occurred on or about September 5, 1936. The certificate of dis-

solution of Inland Public Service Company was filed with the California Secretary of State on March 10, 1937.

7. Attached hereto as joint Exhibit 1-A is a copy of Decision No. 26178 of the opinions and orders of the Railroad Commission of California, dated July 21, 1933.

8. Attached hereto as joint Exhibit 2-B is a copy of Decision No. 26297 of the Railroad Commission of the State of California, dated August 28, 1933.

9. Attached hereto as joint Exhibit 3-C is a certified copy of Ordinance No. 151 of Kings County, California. Said ordinance has never been repealed or amended.

10. Attached hereto as joint Exhibit 4-D is a certified copy of Ordinance No. 290 of Fresno County, California. Said ordinance has never been repealed or modified.

11. Attached hereto as joint Exhibit 5-E is a copy of Application No. 21581 filed November 10, 1937 by Gas Fuel Service Company with the California Railroad Commission.

12. Attached hereto as joint Exhibit 6-F is a copy of Decision No. 30477 of the California Railroad Commission, dated January 3, 1938.

13. Attached hereto as joint Exhibit 7-G is a copy of Decision No. 35825 of the Railroad Commission of the State of California, dated October 6, 1942.

14. Attached hereto as joint Exhibit 8-H is a

copy of a general ledger page from the books of account of Capital Service, Inc., being an account receivable from Central California Utilities Corporation. All of the items appearing as debits to said account represent cash advances by Capital Service, Inc. to or for the benefit of Central California Utilities Corporation, and constituted an indebtedness owing from Central California Utilities Corporation to Capital Service, Inc. On January 1, 1942, said indebtedness was in the amount of \$31,567.81. On December 31, 1942, said indebtedness of \$31,567.81 was charged off the aforesaid account receivable to profit and loss.

15. Capital Service, Inc., at all times material to these proceedings, and since sometime in 1936 owned 1,050 shares of capital stock of Central California Utilities Corporation having an adjusted cost basis of \$1,300.00.

/s/ CHARLES M. WALKER,
Counsel for Petitioner.

/s/ CHARLES OLIPHANT, ECC
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

JOINT EXHIBIT No. 1-A

38 C. R. C. 875-888

Opinions and Orders
of the
Railroad Commission of California

Commissioners: Clyde L. Seavey, President, Leon O. Whitsell, William J. Carr, M. B. Harris, Wallace L. Ware.

Examiners: W. J. Handford, Wm. T. Satterwhite, W. P. Geary, W. C. Fankhauser, Vincent D. Kennedy, Albert L. Johnson.

Decision No. 26178

In The Matter Of The Application Of Gas Fuel Service Company, A Corporation, For A Certificate Of Public Convenience And Necessity Authorizing It To Construct And Operate The Gas Distribution Systems Herein Described, And To Exercise The Franchises Which It Contemplates Acquiring From The Counties Of Kings And Fresno, California.

Application No. 18672

In The Matter Of The Application Of Coast Counties Gas And Electric Company, A Corporation For A Certificate That The Public Convenience And Necessity Requires The Construction By Applicant Of An Extension Of Its Gas System Into Fresno County And The Service Of Natural Gas To The Inhabitants Thereof.

Application No. 18739

In The Matter Of The Application Of West Side Natural Gas Company, A Corporation, For A Certificate That The Public Convenience And Necessity Requires The Exercise By Applicant Of Franchise Privileges In Certain Territory In Kings County And Service Of Natural Gas To The Inhabitants Therein.

Application No. 18746

Decided July 21, 1933

Certificates—Gas Utility.—Gas Fuel Service Company authorized to construct and operate a natural gas system in Kings and Fresno Counties. Applications of Coast Counties Gas and Electric Company and West Side Natural Gas Company denied.

Monopoly and Competition.—A certificate not exercised in any particular territory or to any particular class of consumers is not entitled to protection from the Commission after a newcomer, able and willing to render service, has entered the field, and a utility not exercising a certificate should be placed in the same category as a utility without a certificate when competition comes knocking at the door.

Monopoly and Competition. — Certificates are granted to be exercised pursuant to a showing of convenience and necessity and when a utility possesses a certificate granting it the right to serve a territory it should proceed with due diligence to exercise the same within a reason-

able time, and if it does not it has no just cause for complaint when a vigilant and persuasive utility is allowed to enter the field.

Monopoly and Competition.—A utility handling two sources of service (electricity and natural gas) will not be permitted to stifle the development of the cheaper one.

John A. Dundas, G. Everett Miller, and H. A. Savage, for Applicant Gas Fuel Service Company. Pillsbury, Madison and Sutro, by Hugh Fullerton, for Applicants Coast Counties Gas and Electric Company and West Side Natural Gas Company.

C. P. Cutten, for Pacific Gas and Electric Company and San Joaquin Light and Power Corporation.

H. A. Savage, for San Joaquin Valley Agricultural Power Users Association.

J. J. Deuel and L. S. Wing, for California Farm Bureau Federation and for Kings County Board of Supervisors.

T. J. Reynolds and L. T. Rice, for Southern California Gas Company.

Whitsell, Commissioner.

Opinion

On January 23, 1933, Gas Fuel Service Company, a California corporation, filed Application No. 18672 asking the Commission for an order certifying that public convenience and necessity require and will require the construction and operation of a natural gas transmission and distribution system

for the service of natural gas to the agricultural power users in Fresno and Kings counties and to exercise franchise rights which it contemplates acquiring from said counties.

An amended application was filed on May 10, 1933, which, in effect, eliminated the proposed intermediate transporting pipe line company, increased the number of directors from five to seven, changed the proposed service from "Water Lifting Service" to "Gas Engine Service" and reduced the proposed rate therefor.

On March 1, 1933, Coast Counties Gas and Electric Company, a California corporation, filed Application No. 18739 asking the Commission to issue its certificate that public convenience and necessity require applicant to construct and operate an extension of its natural gas system into Fresno County.

On March 7, 1933, West Side Natural Gas Company, a California corporation, filed Application No. 18746, asking the Commission to issue its certificate that public convenience and necessity require the enlargement of certificate rights granted by Decision No. 23612, dated April 20, 1931, and particularly to exercise franchise rights granted by Ordinance No. 146 of the county of Kings in the areas generally contiguous to the owns of Avenal and Kettleman City and to certain pipe lines of the Standard Oil Company of California.

Southern California Gas Company, a California corporation, entered an appearance and complaint

protesting the granting of a certificate to Gas Fuel Service Company and claimed the right to serve natural gas to consumers of Kings and Fresno counties under a certificate granted to it by the Commission in its Decision No. 21368, dated July 10, 1929.

Public hearings were held in Los Angeles on March 28, 1933, and in Hanford on April 14 and 15 and May 10 and 11, 1933, at which time the matters herein were submitted and are now ready for decision.

The foregoing applications were consolidated for the purpose of hearing and decision.

Gas Fuel Service Company.

The evidence adduced on the part of Gas Fuel Service Company may be succinctly stated as follows:

About three years ago the individuals who later organized this company owned approximately 1500 acres of potential oil and gas lands in what is known as the Dudley Ridge Area in Kings County. The owners of this land organized the Kettleman-Lakeview Gas and Oil Company for the development of their properties. Up to date they have three wells on these properties producing dry gas at a pressure of 510 pounds per square inch with a B.t.u. content of 1012, the average cost per well being approximately \$10,000. Witnesses for applicant estimated the daily production of these wells to be approximately 20,000,000 cubic feet over a period of twenty years. The company sells under contract

1,000,000 cubic feet per day to Pacific Gas and Electric Company and small quantities of gas to others in the vicinity of the wells.

In an effort to find a market for gas over the requirements of the contracts already entered into the owners organized the Gas Fuel Service Company and entered into an active survey to determine the probable extent of the sale of gas among the farmers of Kings and Fresno counties who at the present time use electric power for irrigation purposes. This survey resulted in the filing of this application.

Applicant proposes to construct an 8-inch gas pipe line running from the wells of Kettleman-Lakeview Oil and Gas Company in the Dudley Ridge area in a northerly direction for a distance of approximately thirteen miles to a point approximately three miles southwest of the town of Stratford and from this point applicant will construct a 6-inch pipe line which will run in a northwesterly direction for approximately seventy miles to a point approximately ten miles south of the community of South Dos Palos. In addition to the above transmission lines applicant intends to construct thirty-one miles of 4-inch gas pipe line in the area known as "Tulare Lake" in Kings County and thirty-eight miles of 3-inch gas pipe line in the Fresno County district. Connections from all of the above gas pipe lines will be made by means of 2-inch laterals.

In addition to the supply of gas obtained from

the wells of the Kettleman-Lakeview Oil and Gas Company, applicant has verbal assurances of additional gas, when needed, from producers in the Kettleman Hills district.

In the Kings County territory applicant proposes a flat commodity charge of 16 cents per 1000 cubic feet, with an annual minimum charge to be computed at the rate of \$3.60 per active rated horsepower of connected load per annum, payable in equal monthly installments.

In the Fresno County territory applicant proposes a flat commodity charge of 17 cents per 1000 cubic feet, with the same minimum charge as in the Kings County territory.

Many witnesses appeared on behalf of the applicant and testified that it is not economically feasible to use electric power for irrigation pumping purposes at the rates now charged by the electric utilities serving the areas involved in this application and that the farmers are insistent in their demand that a cheaper source of power be made available; that natural gas can be supplied for pumping of irrigation waters which will result in an over-all saving to the consumer of from one-third to one-half the present costs paid by said consumers. Several farmer witnesses testified that they could personally finance the necessary gas engine facilities in the event the application is granted and they receive gas service.

It developed that there are approximately eighty-one potential gas users in this entire area with a

load approximating 50,000 horsepower. Witnesses for the applicant testified that 80 per cent of the power users in this territory have expressed their willingness and intention to receive gas service in the event the company receives the necessary authorization.

Engineers and officials for the applicant company testified that this company is to be farmer owned, controlled and managed, it being understood and agreed that the stock issued and to be issued shall be pooled under an agreement that at least five of the seven directors shall be farmer-consumers of this company, said pooling agreement to terminate, if at all, when said company has been fully reimbursed out of dividends for all capital outlay.

Evidence was also introduced to the effect that the National Supply Company of California has agreed to supply the consumers of this company with all the necessary gas engine equipment and installation upon a payment of one-fourth down and the balance to be deducted yearly from the "savings effected," said "savings effected" to be figured on the difference in power bills based upon the consumption of gas at the rates proposed by applicant as compared with the present cost of electrical power to the same consumers.

The Gas Fuel Service Company estimates the cost of installing its proposed transmission and distribution lines at approximately \$680,861. Three of the company's witnesses testified that they personally were in a position to invest in the project

amounts aggregating \$200,000 and that if the application is granted they would so invest such sums forthwith to enable construction to commence at once. They testified further that they would accept common stock in payment for such advances and that no common stock would be issued to them for promotion purposes.

As to the financing of the balance of the construction cost, the record shows that negotiations were being had with National Supply Company of California with the end in view of having that company install the lines upon a deferred payment basis. A letter from the company dated May 9, 1933, read into the record, indicates that under certain conditions it may proceed with the installation upon the payment of 25 per cent of the cost at once and of 75 per cent within a reasonable period. The record is not clear when such balance is to be paid, final arrangements apparently not having been made, but it seems to be applicant's desire to obtain such an amount over and above the initial \$200,000 from the earnings from operations over a period of years. As an alternative, should no arrangement be consummated with the National Supply Company of California, it appears from the testimony that those interested in the organization of applicant and of Kettleman-Lakeview Oil and Gas Company possibly could and would finance the entire estimated cost themselves. No final agreements had been made along either line at the time of hearing.

Gas Fuel Service Company does not in this ap-

plication ask permission to issue any stock or evidences of indebtedness. The order herein does not authorize the company to issue any stock nor should it be construed as an approval of any proposed financing. The company's representatives no doubt are aware of the provisions of the Public Utilities Act in regard to the issuance of stock or evidences of indebtedness. I desire to put the company on notice that the Commission does not look with favor on the issue of no par stock for less than \$25 per share, nor does it believe that any undue charges in the form of interest or principal payments or contingent charges in the form of preferred stock dividends should be imposed on the company.

Coast Counties Gas and Electric Company.

Mr. Charles Grunsky, chief engineer for the applicants, Coast Counties Gas and Electric Company and West Side Natural Gas Company, appeared as a witness and his testimony may be summarized as follows:

Applicant Coast Counties Gas and Electric Company, is at present serving natural gas in the area centering about the communities of Gustine, Los Banos, Dos Palos and South Dos Palos, in Merced County, and proposes to extend its natural gas system to that portion of Fresno County contiguous to the pipe lines of the Standard Pacific Gas Line, Inc., Coast Natural Gas Company and Standard Oil Company of California, and serve gas from these lines to consumers within Fresno County under rates now on file with the Commission, said gas to

be served to supply all fuel requirements, domestic, commercial and industrial, within the proposed area. He testified that applicant has agreements with gas producers guaranteeing a sufficient supply of gas to meet all requirements and that the average rates under which it proposes to serve gas for agricultural pumping purposes in this territory would be 25 cents per 1000 cubic feet, approximately 8 cents per 1000 cubic feet higher than the proposed rates of the Gas Fuel Service Company;¹ that the gas proposed to be served by his company is of that heat content approximating 1200 B.t.u., while the gas of the Gas Fuel Service Company has a heat content of only 1012 B.t.u. He testified further that gas can be served by his company under its rates, which will effect a saving of approximately 50 per cent to the farmers under the electric rates now being *paid these* consumers. From surveys made on behalf of his company he testified that public con-

¹The following is a comparison between the rate for Gas Engine Service now on file by Coast Counties Gas and Electric Company and the rate (5 cents lower) that it proposes for Fresno County:

		Rate per 1000 cu. ft.	
		Schedule	Proposed
Consumption		No. 4	Rate
First	100,000 cu. ft. per meter per month	\$0.40	\$0.35
Next	400,000 cu. ft. per meter per month35	.30
Next	500,000 cu. ft. per meter per month30	.25
Over	1,000,000 cu. ft. per meter per month25	.20

Minimum charge:

April to October, inclusive.....\$5.00 per meter per month but
not less than 25 cents per
month per h.p. of connect-
ed load.

November to March, inclusive..\$1.00 per meter per month.

venience and necessity require the granting of the certificate and that applicant, sometime prior to January 1, 1933, solicited business from at least one consumer in the proposed service area, but without success.

He also testified that applicant, West Side Natural Gas Company, now serves natural gas to consumers in Taft, Maricopa, Fellows, Avenal and Kettleman City and is asking authority to serve that territory on the east and west flanks of Kettleman Hills and along the Standard Oil Company's oil pipe line from a point adjacent to Corcoran north to the Fresno County boundary line; that the proposed rate for this area is 25 cents per 1000 cubic feet, the same as the proposed Coast Counties Gas and Electric Company rate; that the heating values of the gas used vary from 950 to 1050 B.t.u. per cubic foot and that no solicitation has been made in this area.

Southern California Gas Company.

Mr. T. J. Reynolds, vice president and general counsel, and Mr. F. M. Banks, general superintendent in charge of sales, both representing Southern California Gas Company, testified that surveys had been made that indicated that it would not be feasible for said utility to extend its service of natural gas to agricultural power consumers in Kings or Fresno counties unless a substantial number of prospective consumers (something approaching 80 per cent) could be signed up to take service; that thus far the utility had been unable to secure the signatures of enough of said consumers to guar-

antee to it what it considered a reasonable return on the investment involved; that its estimates were based upon its presently filed Schedules Nos. E-6 and E-7;² that said utility did exercise its certificates in Kings and Fresno counties in the laying of transmission lines to serve its San Joaquin Valley division and for the transportation of Pacific Gas and Electric Company gas to Fresno; that

²Schedules E-6 and E-7 of Southern California Gas Company are higher rates than the rates proposed by applicant, Gas Fuel Service Company. They cover the service of natural gas for internal combustion engines in Southern California Gas Company's Rate Districts 40, 41, 42, 43 and 45, San Joaquin Valley Division, including the cities of Hanford, Lemoore, Visalia, Tulare, Exeter, Lindsay, Porterville, Kingsburg, Reedley, Dinuba, Parlier, Corcoran and the communities of Orosi, Armona, Caruthers, Cutler, Riverdale, Strathmore and Sultana and territory adjacent thereto, traversed by natural gas mains, where capacity of mains is sufficient to supply demands without detriment to existing service.

The rates are as follows:

Schedule E-6:

Demand charge per active rated horsepower per month, 30 cents.

Commodity charge (to be added to demand charge):

First 3000 cu. ft. per active rated h.p. per mo.
2.0 cents per 100 cu. ft.

Over 3000 cu. ft. per active rated h.p. per mo.
1.7 cents per 100 cu. ft.

Minimum charge:

From May to October, inclusive:

For 15 active rated h.p. or less, \$4.50 per meter per month.

Over 15 active rated h.p., demand charge as above.

From November to April, inclusive:

Southern California Gas Company does not desire to serve agricultural power consumers in that portion of Fresno County covered in the application of Gas Fuel Service Company for the reason that said area is too far from the lines of said Southern California Gas Company, but that it is desirous of serving in the Tulare Lake bed area of Kings County.

\$1.25 per meter per month.

Scheduled E-7 (optional with Schedule E-6):

First 50,000 cu. ft. per meter per month, 4.0 cents per 100 cu. ft.

Next 50,000 cu. ft. per meter per month, 3.0 cents per 100 cu. ft.

Next 50,000 cu. ft. per meter per month, 2.5 cents per 100 cu. ft.

Over 150,000 cu. ft. per meter per month, 2.2 cents per 100 cu. ft.

Monthly and Annual Quantity Discounts:

Less monthly discount of thirty (30) per cent on the amount billed monthly under the above schedule, in excess of the following, and less annual quantity discount of fifteen (15) per cent on the amount of the aggregated twelve (12) months' consecutive billings, under the above schedule less monthly discount, in excess of the following:

Rated connected Horsepower of installation	Monthly discount 30%	Annual discount 15%
	in excess of monthly billing of cu. ft./h.p./meter	in excess of twelve times monthly billing of cu. ft./h.p./meter
Up to 30 h.p.....	600	600
31 to 60 h.p.....	1,100	1,100
61 to 90 h.p.....	1,800	1,800
91 to 120 h.p.....	1,900	1,900
121 to 160 h.p.....	2,300	2,300
161 to 220 h.p.....	2,400	2,400
221 to 300 h.p.....	2,900	2,900
Over 300 h.p.....	3,000	3,000

Minimum charge (not subject to discount):

From May to October, inclusive, \$5 per meter per month.

From November to April, inclusive, \$1 per meter per month.

I feel that a certificate not exercised in any particular territory or to any particular class of consumers is not entitled to protection from the Commission after a newcomer, able and willing to render service, has entered the field. A utility not exercising a certificate should be placed in the same category as a utility without a certificate when competition comes knocking at the door. Certificates are granted to be exercised pursuant to a showing of convenience and necessity and when a utility possesses a certificate which grants it the right to serve a territory it should proceed with due diligence to exercise the same within a reasonable time and the utility which has failed to render service its certificate has no just cause for complaint when the Commission allows a vigilant and persuasive utility to enter the field.

The granting of a certificate to applicant will undoubtedly affect the revenue of electric service in this territory. This, however, is not a new situation, as gas has been invading the electric field for a number of years and the electric utilities have been forewarned. In fact the major electric company in this territory also distributes gas. This Commission will not permit a utility handling two sources of service to stifle the development of the cheaper one. The consumers in this farming district are entitled to any and all financial relief that may accrue to them through this medium of lower priced power.

It is evident from the record that more than

one certificate should not be granted for the service of natural gas to the agricultural power users in the territory involved. The applications of Coast Counties Gas and Electric Company and West Side Natural Gas Company will be denied.

I recommend the following form of order:

Order

Gas Fuel Service Company, Coast Counties Gas and Electric Company and West Side Natural Gas Company having applied to this Commission for certificates of public convenience and necessity authorizing the exercise of franchise rights and the construction of natural gas transmission and distribution systems, all as set forth in these applications, Southern California Gas Company having entered a complaint protesting the granting of a certificate to Gas Fuel Service Company, said applications and complaint having been consolidated for hearing and decision, public hearings having been held thereon, the matters being submitted and now ready for decision:

The Railroad Commission of the State of California hereby orders and declares that public convenience and necessity require and will require the exercise by Gas Fuel Service Company of the rights and privileges granted to it under the franchises which it contemplates securing from the counties of Kings and Fresno, the construction and operation of the natural gas transmission and distribution systems and the service of natural gas under

rates, all as set forth in its amended Application No. 18672, provided that:

(1) The Railroad Commission may hereafter, by appropriate proceedings and orders, revoke or limit, as to territory not then served by Gas Fuel Service Company, or its successors in interest, the authority herein granted.

(2) Gas Fuel Service Company file with this Commission certified copies of the franchises it secures from the counties of Kings and Fresno.

(3) Gas Fuel Service Company file with this Commission a stipulation duly executed on authority of its board of directors agreeing that it will never claim for either of these franchises a value in excess of the actual cost thereof.

(4) Upon the filing of the franchises and stipulation referred to in paragraphs (2) and (3) above, in the proper form, the Commission will issue its supplemental order authorizing the exercise of the rights conferred by such franchises. Said franchises and stipulation shall be filed on or before October 1, 1933.

It is hereby further ordered, that the applications of Coast Counties Gas and Electric Company and West Side Natural Gas Company be and they are hereby denied.

It is hereby further ordered, that the complaint of Southern California Gas Company be and it is hereby dismissed.

The authorization herein granted, except as other-

wise specifically provided, shall be effective from and after the date of this order.

For all other purposes, the effective date of this order shall be twenty days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this twenty-first day of July, 1933.

JOINT EXHIBIT No. 2-B

(Copy)

Before the Railroad Commission of the
State of California.

Decision No. 26297

Application No. 18672

In the Matter of

The Application of GAS FUEL SERVICE COMPANY, a corporation, for a Certificate of Public Convenience and Necessity authorizing it to construct and operate the gas distribution systems herein described, and to exercise the franchises which it contemplates acquiring from the Counties of Kings and Fresno, California.

John A. Dundas, G. Everett Miller, and H. A. Savage for Applicant Gas Fuel Service Company.
Pillsbury, Madison and Sutro, by Hugh Fullerton,

for Applicants Coast Counties Gas and Electric Company and West Side Natural Gas Company.

C. P. Cutten for Pacific Gas and Electric Company and San Joaquin Light and Power Corporation.

H. A. Savage, for San Joaquin Valley Agricultural Power Users Association.

J. J. Deuel and L. S. Wing, for California Farm Bureau Federation and for Kings County Board of Supervisors.

T. J. Reynolds and L. T. Rice for Southern California Gas Company.

By the Commission:

SUPPLEMENTAL OPINION AND ORDER

In its Decision No. 26178, dated July 21, 1933, the Commission ordered that:

“(2) Gas Fuel Service Company file with this Commission certified copies of the franchises it secures from the Counties of Kings and Fresno.

(3) Gas Fuel Service Company file with this Commission a stipulation duly executed on authority of its Board of Directors agreeing that it will never claim for either of these franchises a value in excess of the actual cost thereof.

(4) Upon the filing of the franchises and stipulation referred to in paragraphs (2) and (3) above, in the proper form, the Commission will issue its supplemental order authorizing the exercise of the rights conferred by such franchises. Said franchises

and stipulation shall be filed on or before October 1, 1933."

Gas Fuel Service Company having filed with the Commission, under date of August 18, 1933, the franchises and stipulation referred to above, in proper form,

The Railroad Commission of the State of California Hereby Orders that a certificate of public convenience and necessity be and it is hereby granted to Gas Fuel Service Company authorizing said utility to exercise the rights and privileges granted to it under Ordinance No. 151 of the County of Kings and Ordinance No. 290 of the County of Fresno, provided that the Commission may hereafter, by appropriate proceedings and orders, revoke or limit, as to territory not then served by Gas Fuel Service Company, or its successors in interest, the authority herein granted.

The effective date of this order shall be from and after the date hereof.

Dated at San Francisco, California, this 28th day of August, 1933.

C. L. SEAVEY,
LEON O. WHITSELL,
W. J. CARR,
M. B. HARRIS,
Commissioners.

Certified As A True Copy

.....
Secretary, Railroad Commission
State of California

JOINT EXHIBIT No. 3-C

Ordinance No. 151

Ordinance of the Board of Supervisors of the County of Kings, State of California, granting to Gas Fuel Service Company, a corporation, its successors or assigns, the right, privilege, and franchise to lay and construct and to thereafter operate, maintain, repair and/or replace a system of conduits and pipelines, together with such fixtures or appurtenances as the grantee, its successors or assigns may deem necessary or convenient in connection therewith, in, under, along or across all public streets, highways and/or alleys of said county for the purpose of transmitting and/or distributing gas to the public for light, heat, fuel, power or any other lawful purposes, for the term of fifty (50) years.

The Board of Supervisors of the County of Kings do ordain as follows:

Section 1.

The right, privilege and franchise to lay and construct and to thereafter operate, maintain, repair and/or replace a system of conduits and pipelines, together with such fixtures or appurtenances as the grantee, its successors or assigns, may deem necessary or convenient in connection therewith, in, under, along or across all public streets, highways and/or alleys of said County, for the purpose of transmitting and/or distributing gas to the public for light, heat, fuel, power, and any other lawful

purposes for the term of fifty (50) years from and after the effective date of this ordinance are hereby granted to Gas Fuel Service Company, a corporation, its successors or assigns.

Section 2.

All gas pipes, mains and other conduits which shall be laid and used under and pursuant to the provisions of this ordinance and in the exercise of the right, privilege and franchise herein granted shall be of iron, or other suitable material, and shall be of such dimensions as the owner for the time being of said right, privilege and franchise shall determine. All such gas pipes, mains and conduits shall be laid in a good and workmanlike manner at least eighteen (18) inches below the surface of said streets, highways and/or alleys under the direction of the County Engineer of the County of Kings or other officer having charge thereof.

Section 3.

The right, privilege and franchise hereby granted is not exclusive, and the right of the said County to grant like rights, privileges, and franchises to others is hereby reserved provided that such grants shall not interfere with the reasonable use of the rights granted hereunder.

Section 4.

The grantee herein and his assigns must, during the life of said franchise, pay to the County of Kings, two per cent (2%) of the gross annual receipt arising from its use, operation, or posses-

sion. No percentage shall be paid for the first five (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable annually; and in the event said payment is not made, said franchise shall be forfeited.

Section 5.

Work under said right, privilege and franchise shall be commenced within not more than four (4) months from the granting thereof, and if not so commenced shall be declared forfeited. Said work shall be completed within a reasonable time. The grantee herein must save and keep harmless the County of Kings from damages due to construction and maintenance of said conduits, pipelines, fixtures and appurtenances.

Section 6.

This ordinance shall take effect and be in force thirty (30) days from and after its passage and approval.

Introduced, adopted and passed by said Board of Supervisors, at a regular meeting held on the 15th day of May, 1933, by the following vote:

Ayes: Grant Garner Supervisors

J. H. McGlashan

H. M. Nelson Supervisors

S. E. Railsback

Absent: T. E. Cochrane, Supervisor.

Noes: None

S. E. RAILSBACK

Chairman of the Board of Supervisors of the
County of Kings, State of California.

Attest:

[Seal]

E. F. PICKERILL

Clerk of the Board of Supervisors of the County
of Kings, State of California.

By MARJORIE BOYD,

Deputy.

[Endorsed]: Filed May 15, 1933.

State of California,
County of Kings—ss.

I, E. F. Pickerill, County Clerk and ex-officio
Clerk of the Board of Supervisors of said County
and State, do hereby certify the foregoing to be a
full, true and correct copy of the original thereof
on file in my office.

Witness my hand and seal of said Board, this
23rd day of April, 1948. E. F. Pickerill, Clerk of
said Board.

[Seal] By /s/ VERNICE THOMSEN,

Deputy Clerk.

Kings County

Board of Supervisors

Hanford, California

State of California,
County of Kings—ss.

I, E. F. Pickerill, County Clerk and ex-officio
Clerk of the Board of Supervisors of the County

of Kings, State of California, do hereby certify that Kings County Ordinance No. 151, which was adopted by the Board of Supervisors of the said County and State, has not been repealed nor amended.

A certified copy of said Ordinance is hereto attached.

In Witness Whereof, I have hereunto set my hand and official seal this 23rd day of April, 1948.

E. F. PICKERILL,

County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Kings, State of California.

[Seal] By /s/ VERNICE THOMSEN,
Deputy.

JOINT EXHIBIT 4-D

(Copy)

Ordinance No. 290

Ordinance of the Board of Supervisors of the County of Fresno, State of California, granting to Gas Fuel Service Company, a corporation, its successors or assigns, the right, privilege, and franchise to lay and construct and to thereafter operate, maintain, repair and/or replace a system of conduits and pipelines, together with such fixtures or appurtenances as the grantee, its successors or assigns may deem necessary or convenient in connection therewith, in, under, along or across all public streets, highways and/or alleys of said county for the purpose

of transmitting and/or distributing gas to the public for light, heat, fuel, power or any other lawful purposes, for the term of fifty (50) years.

The Board of Supervisors of the County of Fresno do ordain as follows:

Section 1.

The right, privilege and franchise to lay and construct and to thereafter operate, maintain, repair and/or replace a system of conduits and pipelines, together with such fixtures or appurtenances as the grantee, its successors or assigns, may deem necessary or convenient in connection therewith, in, under, along or across all public streets, highways and/or alleys of said County, for the purpose of transmitting and/or distributing gas to the public for light, heat, fuel, power, and any other lawful purposes for the term of fifty (50) years from and after the effective date of this ordinance are hereby granted to Gas Fuel Service Company, a corporation, its successors or assigns.

Section 2.

All gas pipes, mains and other conduits which shall be laid and used under and pursuant to the provisions of this ordinance and in the exercise of the right, privilege and franchise herein granted shall be of iron, or other suitable material, and shall be of such dimensions as the owner for the time being of said right, privilege and franchise shall determine. All such gas pipes, mains and conduits shall be laid in

a good and workmanlike manner at least eighteen (18) inches below the surface of said streets, highways and/or alleys under the direction of the County Engineer of the County of Fresno or other officer having charge thereof. Any pipe line, main, conduit, installed or maintained under and pursuant to the provisions of this ordinance and in exercise of the right, privilege and franchise herein granted, shall be so installed and maintained under and in accordance with such reasonable directions and plans as may be given by the Board of Supervisors of Fresno County, or its duly authorized representative, and shall be subject to the posting of such bonds for the replacing of highways as may hereafter be required by any ordinance of the County of Fresno, and all reasonable care shall be exercised to prevent inconvenience or damage to the traveling public by virtue of any construction or maintenance work done under this franchise.

Section 3.

Any highway damaged or torn up by any construction or maintenance work done under the right, privilege and franchise herein granted shall be repaired and replaced as soon as is reasonably possible after the completion of such construction or maintenance work, in as good condition as said highway was at the commencement of such construction or maintenance work, and the grantee of this franchise, its successors or assigns, shall hold the County of Fresno harmless from any and all damage to third parties resulting from the laying, use or operation of any pipes, mains, conduits or

works of any kind or description, laid, used or operated under the terms of this franchise.

Section 4.

The grantee of this right, privilege and franchise, its successors and assigns, shall at such times as the Board of Supervisors of Fresno County shall request, but not oftener than once each year, beginning one year from the date of the granting of this right, privilege and franchise, prepare and file with the Board of Supervisors of the County of Fresno, a map or maps, on a scale as large as two inches to one mile, or in lieu thereof a written statement clearly and intelligibly setting forth in complete detail, showing the location of any and all mains and lateral pipe lines and conduits on the public highways of said County as of the date of said request.

Section 5.

The right, privilege and franchise hereby granted is not exclusive, and the right of the said County to grant like rights, privileges and franchises to others is hereby reserved, provided, that such grants shall not interfere with the reasonable use of the rights granted hereunder.

Section 6.

The grantee herein and his assigns must, during the life of said franchise, pay to the County of Fresno, two per cent (2%) of the gross annual receipts arising from its use, operation or possession. No percentage shall be paid for the first five (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable an-

nually; and in the event said payment is not made, said franchise shall be forfeited.

Section 7.

Commencing at the end of the sixth year from the date of the granting of this franchise, the grantee, its successors and assigns, shall, if requested, by the Board of Supervisors of Fresno County, furnish to said Board of Supervisors a statement in writing showing the gross receipts of said grantee received from each consumer connected with its system located and maintained under this franchise for the preceding twelve (12) months, and each and every year thereafter during the life of this franchise, the grantee shall, if so requested by the said Board of Supervisors, furnish to said Board a like statement covering the year preceding the date of the rendition of said accounting. Such accounting shall cover the period for which the yearly payments are made. Grantor may at any reasonable time, through an authorized agent of its Board of Supervisors, examine grantee's books for the purpose of verifying the accounting above provided for.

Section 8.

Work under said right, privilege and franchise shall be commenced within not more than four (4) months from the granting thereof, and if not so commenced shall be declared forfeited. Said work shall be completed within a reasonable time. The grantee herein must save and keep harmless the County of Fresno from damages due to construc-

tion and maintenance of said conduits, pipelines, fixtures and appurtenances.

Section 9.

The neglect, failure or refusal on the part of said grantee, its successors or assigns, to comply with, keep and observe the terms and conditions of the franchise and privilege herein granted, shall be cause of forfeiture of said franchise and privilege.

Section 10.

This ordinance shall take effect and be in force thirty (30) days from and after its passage and approval.

Introduced, adopted and passed by said Board of Supervisors, at a regular meeting held on the 5th day of May, 1933, by the following vote:

Ayes: Supervisors McMurtry, Collins, Jones,
Clark, Gonser

Noes: Supervisors None

Absent: Supervisors None

/s/ N. P. GONSER,

Chairman of the Board of Supervisors of the
County of Fresno, State of California.

Attest:

D. M. BARNWELL

Clerk of the Board of Supervisors of the County
of Fresno, State of California.

[Seal] By FRED E. MAIN,
Deputy

State of California,
County of Fresno—ss.

I, E. Dusenberry, County Clerk and ex-officio
Clerk of the Board of Supervisors of said Fresno

County, do hereby certify the foregoing to be a full, true and correct copy of the original Ordinance No. 290 now of record in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Board of Supervisors this 23rd day of April, 1948.

E. DUSENBERRY,

County Clerk and Ex-officio Clerk of said Board of Supervisors.

[Seal] By /s/ GEO. M. FURNEAUX,
Deputy Clerk.

County of Fresno
Fresno, California
April 23, 1948

To Whom It May Concern:

This is to certify that Ordinance No. 290 of the County of Fresno, State of California, granting Franchise to Gas Fuel Service Company, is still in full force and effect on the records of the Clerk of the Board of Supervisors, and that same has not been repealed or modified.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Board of Supervisors this 23rd day of April, 1948.

E. DUSENBERRY,

County Clerk and Ex-officio Clerk of said Board of Supervisors.

[Seal] By /s/ GEO. M. FURNEAUX,
Deputy Clerk.

Filed Railroad Commission, State of California,
August 18, 1933.

JOINT EXHIBIT No. 5-E

(Copy)

Before the Railroad Commission of the
State of California

In the Matter of

The Application of GAS FUEL SERVICE COMPANY for permission to temporarily discontinue service in Kings County.

Application

The petition of Gas Fuel Service Company, a California corporation, respectfully shows:

I.

That the Applicant is engaged in business as a public utility within the State of California, distributing natural gas within Kings County.

II.

That the post-office address of Applicant is Room 503, at 510 South Spring Street, in the City of Los Angeles, County of Los Angeles, State of California.

III.

That a copy of the Articles of Incorporation of Applicant and amendments thereto, certified by the Secretary of State of the State of California, was heretofore filed with this Commission, in the Matter of Application No. 18746, bearing date of January 20, 1933.

IV.

That a financial statement of Applicant as of December 31, 1936, has been filed with the Commission with Annual Report for the year 1936.

V.

That Applicant is at present serving with natural gas under its various schedules, approximately ten consumers within the area centering about the community of Stratford in Kings County under conditions that are impossible to maintain.

That due to the failure of Applicant's gas supply from Dudley Ridge, Kings County, last June, a temporary contract to supply gas was entered into with the Southern California Gas Company.

That due to the heavy floods and rains during the last year, Applicant's gas transmission lines show a considerable line loss.

That due to excessive water supply, the use of natural gas for agricultural purposes (the chief business of Applicant) has been very small, thereby exaggerating this line loss to the extent that out of 2,614 MCF of gas delivered into Applicant's lines during the month of October, 1937, only 422.341 cubic feet was recorded on consumers meters.

That Applicant has made a field check of conditions and through its local representative notified its consumers of the possible temporary discontinuance of service, and has noticed no unreasonable bad reaction yet.

That Applicant considers it necessary and advisable to temporarily discontinue service until such

time as its lines can be put in condition to efficiently serve its consumers.

That Applicant estimates that the time required to perform the work necessary is approximately one hundred and twenty (120) days.

VI.

That Applicant's proposed temporary discontinuance of service will not be a detrimental inconvenience to its consumers in as much as the principal business of applicant is the selling of natural gas for supplying water for agricultural purposes, which volume of business has been practically nothing, and is not expected to be required before March, 1938.

VII.

Wherefore, Applicant asks that the Railroad Commission of the State of California permit the temporary discontinuance of Applicant's service for the purposes and reasons hereinabove set forth.

Dated at Los Angeles, California, this 10th day of November, 1937.

GAS FUEL SERVICE COMPANY,

By W. MARTIN LATHROP,
Its Vice-President

State of California,
County of Los Angeles—ss.

W. Martin Lathrop, being first duly sworn, deposes and says: That he is the Vice-President of Applicant, Gas Fuel Service Company, a corpora-

tion, the Applicant named in the foregoing application and makes this affidavit for and on behalf of said corporation; that he has read the foregoing application and knows the contents thereof; and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and that as to those matters he believes it to be true.

W. MARTIN LATHROP

Subscribed and sworn to before me, this 10th day of November 1937.

WINSLOW P. HYATT

Notary Public in and for the County of Los Angeles, State of California.

Filed Railroad Commission State of California
Nov. 10, 1937.

JOINT EXHIBIT No. 6-F

(Copy)

Before the Railroad Commission of the
State of California

Decision No. 30477

Application No. 21581

In the Matter of

The Application of GAS FUEL SERVICE COMPANY, for permission: 1. To temporarily discontinue service in Kings County. 2. To revise its Gas Engine Service Schedule within the territory, and 3. To file with the Commission

its schedule for Domestic Service within the territory.

W. Martin Lathrop, for Applicant

By the Commission:

OPINION

The Gas Fuel Service Company asks permission—

1. To temporarily discontinue gas service in Kings County;
2. To revise and increase its Gas Engine Service Schedule No. 1;
3. To file an original General Service Schedule No. 3.

Schedules No. 1 and No. 3 are attached to the application as Exhibits "C" and "D", respectively.

Public hearing was held before Examiner C. C. Brown at Stratford, California, on December 1, 1937.

In its Decision No. 26297, dated August 28, 1933, the Commission granted a certificate of public convenience and necessity to applicant, authorizing the exercise of the rights and privileges under franchises granted to it by Ordinance No. 151 of the County of Kings and Ordinance No. 290 of the County of Fresno.

Applicant then laid certain gas lines in Kings County and, on July 5, 1934, filed its original Schedules No. 1 and No. 2 covering the service of natural gas for internal combustion engine and agricultural use in Kings County at a flat rate of 16c per M.c.f., and in Fresno County at a rate of 17c per M.c.f., respectively. These two schedules are still in effect and constitute applicant's only

filed rates. Applicant serves some ten consumers, all located in Kings County.

The record shows that in June, 1936, applicant's gas supply at Dudley Ridge, Kings County, gave out and that applicant at that time entered into a contract with Southern California Gas Company for the purpose of its supply of gas; that during the month of October, 1937, its purchases from this source amounted to 2,614,000 cubic feet, while its sales to consumers totaled 422,341 cubic feet, the difference being attributable to line losses; that on November 10, 1937, applicant temporarily ceased rendering the service of gas to its consumers.

Attached to the application as Exhibit "A" is a consolidated operating statement for the period January 1, 1937, to October 31, 1937, which lists income as \$1,153.31, expenses as \$5,029.54, and net operating loss as \$3,876.23.

Applicant introduced evidence which establishes the fact that even with a normal ten per cent line loss the revenue received from sales under its present Schedule No. 1—Gas Engine Service at a rate of 16c per M.c.f. will be inadequate to meet operating expenses and that this rate should be increased to 20c per M.c.f. This increase will be granted.

The tremendous line loss pointed out above is entirely inexcusable and indicates gross inefficiency on the part of applicant in the maintenance of its facilities. This inefficiency has resulted in the rendering of inferior service to its consumers and unduly high operating costs, particularly in the cost of gas purchased. This condition can not be allowed

to continue and must be remedied at once.

Applicant estimates that it will take from sixty to one hundred twenty days to repair these lines and that it will cost approximately two thousand dollars (\$2,000.00).

Applicant alleges that it has negotiated a contract with C. C. Friend for an adequate and permanent supply of natural gas at a price of 5c per M.c.f.

Applicant requests permission to revise and increase the rate for gas engine service in its Schedule No. 1 from 16c to 20c per M.c.f. Several consumers testified that they did not protest this increase provided they were rendered continuous and adequate service.

Applicant requests further permission to file and make effective a Schedule No. 3, covering the service of natural gas for general domestic and commercial use at the following rates:

First 1,000 cu. ft. or less per meter per month	\$1.00
Over 1,000 cu. ft. per meter per month	at .60/M.c.f.
Monthly minimum charge	\$1.00

It appears that applicant has been serving a number of consumers under this unfiled schedule in violation of the Public Utilities Act and the rules and regulations of this Commission. The practice of serving consumers under other than filed rates or agreements must cease at once and not be repeated in the future.

Order

It is found as a fact that applicant's present Schedule No. 1—Gas Engine Service is too low

and that same should be increased from 16c to 20c per M.c.f., and

It Is Hereby Ordered that applicant, Gas Fuel Service Company,

1. Proceed at once to repair its lines and facilities, and to put them in good operating condition for the rendering of adequate and continuous gas service to its consumers.

2. Expedite and complete this work and resume gas service to its consumers at the earliest possible date.

3. Render as a progress report, in writing, to the Commission at the end of each thirty (30) day period after the date of this order, outlining the status of the above work until same is completed.

4. File with the Commission at once its suggested amended Schedule No. 1—Gas Engine Service and Schedule No. 3—General Service, attached to the application as Exhibits "C" and "D", respectively, same to become effective within thirty (30) days after filing.

This order shall be effective immediately.

Dated San Francisco, California, January 3, 1938.

WALLACE L. WARE,
LEON O. WHITSELL,
FRANK R. DEVLIN,
RAY C. WAKEFIELD,
RAY L. RILEY,
Commissioners.

JOINT EXHIBIT No. 7-G

(Copy)

Before the Railroad Commission of the

State of California

Decision No. 35825

Application No. 18672

In the Matter of

The Application of GAS FUEL SERVICE COMPANY, a corporation, for a Certificate of Public Convenience and Necessity authorizing it to construct and operate the gas distribution systems herein described, and to exercise the franchises which it contemplates acquiring from the Counties of Kings and Fresno, California.

By the Commission:

SECOND SUPPLEMENTAL OPINION
AND ORDER

By its preliminary Decision No. 26178 dated July 21, 1933 and confirming supplemental Decision No. 26297 dated August 28, 1933, this Commission granted Gas Fuel Service Company authority to exercise rights and privileges granted it under franchises secured from the counties of Fresno and Kings, to construct and operate gas transmission and distribution systems in specified portions of said counties, and to serve natural gas therein under regularly established rates. The authority so granted was subject, among others, to the following condition:

“The Railroad Commission may hereafter, by appropriate proceedings and orders, revoke or limit

as to territory not then served by Gas Fuel Service Company, or its successors in interest, the authority herein granted.”

In a letter dated June 9, 1942 Gas Fuel Service Company advised the Commission that it was no longer operating and that it had been inactive for the past three years; therefore, good cause appearing,

It Is Ordered that the authority granted Gas Fuel Service Company by Decision No. 26178, and confirmed by Decision No. 26297, be, and hereby is, revoked.

The effective date of this decision shall be the date hereof.

Dated at San Francisco, California, this 6th day of October, 1942.

/s/ JUSTUS F. CRAEMER,
C. C. BAKER,
FRANCK R. HAVENNER,
RICHARD SACHSE,
Commissioners.

Certified As A True Copy

/s/ [Illegible.]

Secretary, Railroad Commission of the State of
California.

ACCOUNT

Central California Electric Corp.

FORM NO. 153

RECEIVED BY THE ACCOUNTS DEPARTMENT LOS ANGELES

STANDARD CENTRAL LEDGER

DATE	POSTING REF.	DEBIT	CREDIT	DR CR BAL.	BALANCE
Aug 11	CR #101 - Indiana Hotel	500000			
Sept 1	CR #105 - Petroleum Supply Co.	500000			
"	100 - Electric & Gas Supply Co.	50770			
"	107 - Anderson	50770			
"	100 - Electric & Gas Supply Co.	57460			
"	100 - Anderson	57460			
"	111 - Electric & Gas Supply Co.	100000			
"	112 - Supply & Gas Co.	20000			
"	113 - Loan on Note	2000000			
"	114 - Petroleum Supply Co.	1000000			
"	115 - General & Legal	25000			
"	116 - City of State & Insurance	10000			
Oct 8	Central Cal. Elec. Corp.	61		415551	
"	Do	61		300000	
"	Gas Fuel Service Co.	61		168152	
"	Electric & Gas Supply Co.	61		214953	
Aug 15	#100 - Corp. & Insurance	17271			
"	#103 - Walter - Do.	17254			
Sept 6	#110 - Seaboard Electric	25000			
1937					
Feb 15	#136	3500			237500
Mar 1	138	3000			267500
Apr 29	145	10000			277500
May 3	149	10000			287500
"	155	600			
June 15	161	800			301500
July 16	166	750			299000
"	167	500			314000
Aug 6	169	700			321000
"	170	500			326000
"	171	800			334000
Oct 1	176	800			342000
Dec 20	185	500			347500

forwarded



GENERAL LEDGER

PRINTED IN U.S.A.

COUNT

Central Calif Utilities Corp
Notes Receivable

FORM NO. 153 HONORABLE LODGE & CO., LOS ANGELES

STANDARD GENERAL LEDGER

REG. U. S. PAT. OFF.

DATE	POSTING REF.	DEBIT	CREDIT	DR CR BAL.	BALANCE
11/28					
m 1					34250 -
Y 4		50 -			34300 -
ne 3			1900		32400
<hr/>					
39.					
940					
APR 30	3/14	83419	83419		3156781
42					
46 31	Chg. off to P&L	814	3156781		0

[Title of Tax Court and Cause.]

MOTION TO SUBSTITUTE COUNSEL

Comes Now petitioner, and respectfully shows:

That it desires to withdraw Hyman Smith, Esq., as counsel of record herein and substitute Joseph D. Brady, Esq., Walter L. Nossaman, Esq., and Charles M. Walker, Esq. as counsel of record;

That notice of said change of counsel of record has been given to Hyman Smith, Esq., the present counsel of record.

Wherefore, petitioner respectfully requests leave of this Court to withdraw Hyman Smith, Esq., as counsel of record and substitute Joseph D. Brady, Esq., Walter L. Nossaman, Esq. and Charles M. Walker, Esq., of 433 South Spring Street, Los Angeles 13, California, as counsel of record herein.

April 26, 1948. Los Angeles, California.

[Corporate Seal]

CAPITAL SERVICE, INC.

By /s/ M. B. PRICE,

Vice-President.

Petitioner.

I agree to the within substitution.

/s/ HYMAN SMITH.

April 26, 1948.

Granted: May 5, 1948.

/s/ WILLIAM W. ARNOLD,

Judge.

Filed April 26, 1948. T.C.U.S.

[Title of Tax Court and Cause.]

ENTRY OF APPEARANCE

The undersigned, being duly admitted to practice before The Tax Court of the United States as Attorney ~~C. P. A.~~, * * * herewith enters his appearance for the petitioner in the above-entitled proceeding.

/s/ CHARLES M. WALKER,
433 S. Spring St.,
Los Angeles 13.

* * * Cross out qualification class not applicable.
Filed May 5, 1948. T.C.U.S.

[Title of Tax Court and Cause.]

ENTRY OF APPEARANCE

The undersigned, being duly admitted to practice before The Tax Court of the United States as Attorney ~~C. P. A.~~, * * * herewith enters his appearance for the petitioner in the above-entitled proceeding.

/s/ JAMES L. WOOD,
433 S. Spring St.,
Los Angeles 13.

* * * Cross out qualification class not applicable.
Filed May 5, 1948. T.C.U.S.

Minutes of Proceedings

The Tax Court of the United States

May 5, 6, and 11, 1948.

Los Angeles, Calif.

Docket No. 13562.

[Title of Cause.]

Assigned to: Judge W. W. Arnold, Division No. 12.

On the merits yes.

On motion of petitioner's counsel to substitute counsel granted.

Motion of petitioner's counsel to file amended petition. No obj. by resp. Granted.

Motion of respondent to file amended answer thereto. Granted.

Ordered: Permission to conform duplicate stipulation.

Leave granted to Counsel for resp. to withdraw exhibits and substitute photostatic copies.

By agreement of counsel the income tax returns of Gas Fuel Service Co. from 1936 to 1940 will be supplied and marked Ex. EE to II, inclusive.

Filed at hearing: Amended petition. Amended answer. Stipulation of Facts.

Petitioner's brief: Concurrent June 21st. Reply July 21st.

Respondent's brief: Concurrent June 21st. Reply July 21st.

THE TAX COURT OF THE UNITED STATES

Docket No. 13562

CAPITAL SERVICE, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Before: Honorable William W. Arnold,

Judge.

APPEARANCES

CHARLES F. WALKER, and

JAMES L. WOOD,

361 Title Insurance Building,

Los Angeles, California,

appearing for the Petitioner.

R. E. MAIDEN, JR.,

HONORABLE CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue,

appearing for the Respondent. [1*]

PROCEEDINGS

The Court: Call the next.

The Clerk: Capital Service, Inc., Docket 13562.

Mr. Walker: Ready for Petitioner, your Honor.

Mr. Maiden: Ready for the Respondent. R. E. Maiden, Jr., for Respondent.

Mr. Walker: Charles M. Walter for Petitioner.

The Court: Very well, gentlemen, you may tell me what the issues are in your case, and what you expect to cover by your testimony.

Mr. Walker: If the Court please, Petitioner

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

would like to offer at this time, motion for leave to file an amended Petition, and to submit an amended Petition for filing. This matter has been discussed with counsel for Respondent and it is agreeable to him. The purpose of the amended pleading, your Honor, is not to raise any additional issues which would need elaboration at the hearing, just simply to line up the necessary allegations in view of the complicated provisions of the loss carry-over and consolidated return provisions. All of the issues of our case remain exactly the same.

Mr. Maiden: That is true, your Honor, and the Respondent has no objection to the Court's receiving the amended Petition, and the Respondent has prepared his amended Answer, having been served with a copy, but I forgot it this morning, but one of the girls will bring it here during the course of the day [3] and I will file my Answer to the amended Petition some time around noon.

The Court: Very well. Amended Petition filed.

Mr. Walker: I believe also, your Honor, that I would like to call the Court's attention to the fact that there was a motion filed at the calendar call of this case for substitution of counsel for the Petitioner. I am not certain that that motion has been called to the attention of the Court, but it has been made and counsel has made no objection thereto.

The Court: Motion to substitute counsel has been granted.

Opening Statement on Behalf of the Petitioner

By Mr. Walker

Mr. Walker: If the Court please, the parties

have entered into a stipulation of facts covering a good many of the facts in this case. Many of the facts stated in the stipulation appear to be rather technical details regarding the net operating loss carryover provisions in connection with consolidated returns.

We have been quite precise, we believe, in setting forth only such facts as can be agreed to, and which will lead the Court to a proper determination of the issue on the technical ground of that nature.

The essence of our case is the one of worthlessness in [4] 1942 of an indebtedness owed to Petitioner by a corporation known as Central California Utilities Corporation. The question of whether or not the indebtedness and some \$1,300.00 of stock of the debtor corporation owned by the Petitioner became worthless in 1942 is significant in this 1943 case, because of the net operating loss carryover provisions. So that having stipulated as we have, the Court has to consider only the question of whether or not this indebtedness and the stock had become worthless in 1942, or whether it did not.

The basis upon which worthlessness is claimed is that the Central California Utilities Corporation, the debtor, was a corporation which was conducting a gas distributing service in Kings and Fresno Counties, California. At the time the indebtedness was incurred, in 1936, the gas distributing business in Kings County and Fresno County was not a very healthy business, and it was known to be unhealthy by Petitioner when the money was advanced. The money was nevertheless advanced, because it looked

like a potentially good prospect, and the money was put at the risk of a venture in the hope of reaping a rather handsome gain from it.

Subsequent to the advance of the money in 1936, conditions changed somewhat in that area, and additional money would be necessary to put the project on its feet. Petitioner had no money to do it, but it hoped to secure it, and if it could not it would be able to find another source of supplying [5] money for it, in which case Petitioner's position in this company would be able to be recovered and be recouped, and until the war conditions of 1942 came about that was the aspiration and hope and very real expectation of the Petitioner. But due to the war conditions of 1942, it was necessary to abandon such hope and having done so, to abandon the only asset which petitioner claims to have existed through 1941 until 1942, namely, a certificate of convenience and necessity granted to the debtor corporation or one of its subsidiaries for the distribution of gas in Kings and Fresno Counties.

That, if the Court please, is the essence of our case, and the witnesses which we will call will bring the matters out in more detail.

Opening Statement on Behalf of the Respondent

By Mr. Maiden

Mr. Maiden: If the Court please, Mr. Walker has properly stated the issues drawn between the parties, and he has given, of course, his view of what the facts are. I do not necessarily agree with the interpretation he has placed upon the facts, but I do not consider it necessary for me to make a

statement with regard to what the Respondent considers to be the facts as they will be developed here in the record.

The Court: Very well.

Mr. Walker: If the Court please, I would like to submit the stipulation of facts that the parties have entered into. There are some very minor changes which counsel and I have indicated in ink this morning on the original, and the duplicate copy which will be filed, has not as yet been conformed to this, but it can be in very short order, and I would like the record to show that the stipulation has been offered at this time.

The Court: The original stipulation of facts filed will be received as evidence in the case. Permission given to conform duplicate stipulation to the original stipulation as now filed. Is that satisfactory?

Mr. Walker: Fine.

The Court: Call your first.

Whereupon,

RALPH W. MOORE

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Ralph W. Moore.

Direct Examination

By Mr. Walker:

Q. Mr. Moore, what is your business or profession?

(Testimony of Ralph W. Moore.)

A. Well, I have been a business manager and organizer of various concerns, go into a company that needed refinancing [7] or new management and try to see if I couldn't work that out and put them on a profitable operating basis.

Q. How long have you been so engaged?

A. About, from approximately 1930.

Q. 1930? A. Around 1930.

Q. You have made a business of being a business manager in connection with getting organizations on their feet. I wonder if you could elaborate a little bit more, please, take one specific case for example, in which you engaged in such activities.

A. Well, the reorganization of the Inland Public Service Company was one..

Q. Can you state another, prior for example, to Inland?

A. Yes, the Edding Winthrop Refining Company at Long Beach.

Q. Generally speaking, what activities did you perform in connection with that Long Beach project?

A. Well, we first made a survey of it for the Bank of America to see just what condition it was in and what the possibilities were of trying to work it out. After filing a report, they seemed to feel that it could be revamped and it was. We, by the repairs of the company, paid the bank practically all its money. [8]

Q. How long a time did that project consume?

(Testimony of Ralph W. Moore.)

A. I would say approximately two years, a year and a half or two years.

Q. You mentioned also that you had done similar work for the Inland Public Service Company?

A. Yes.

Q. When did you first become interested in the Inland Public Service Company?

A. It was in the latter part of 1935.

Q. Did you contact a man named Dundas in connection with that project? A. Yes.

Q. Who was he?

A. Mr. Dundas was an attorney and one of the original promoters of the Inland Public Service Company, a man whom I had known in Portland during the last war.

Q. And who brought this Inland project to your attention?

A. Well, I would say that it came up in the course of a conversation.

Q. Why was it that he brought it to your attention?

A. Well, he seemed to feel that I had some financial connections and some experience in the management of different kinds of business, and he felt that if someone would take hold of it that could straighten it out, and procure some additional [9] working capital, that it was a very splendid proposition.

Q. Did you become interested in seeing what you could do with it?

(Testimony of Ralph W. Moore.)

A. Yes, I first went and looked over the property and saw what it was, talked with many of the ranchers up in that section, and I decided that if it could be reorganized and put on its feet it was a very splendid and could be a very profitable operation.

Q. What led you to believe that it did have such possibilities?

A. Well, they had one small gas lead and they had an opportunity of securing others. The gas was shallow gas, at about 1200 feet, and they had a franchise from the State Railroad Commission permitting them to sell gas at 16 cents in Kings County and 18 cents in Fresno County.

Q. Right at that point, Mr. Moore, I would like to call your attention to the necessity of being careful about future terminology with reference to this franchise from the State of California, did you say?

A. Well, from the Railroad Commission. I presume that is the State of California.

Q. I believe that is correctly referred to as a certificate of public convenience and necessity.

A. That is right.

Q. As distinguished from a franchise. We also have [10] franchises, in the picture, your Honor, and I prefer not to confuse them. You say, then, that there was a certificate of convenience and necessity to serve Kings and Fresno Counties?

A. Yes, all of Kings and Fresno Counties except the incorporated cities. That was the terms of the franchise.

(Testimony of Ralph W. Moore.)

Q. You say you became interested in it. What was there in it for you?

A. Well, naturally, I expected to have a substantial portion of the profits, if any, that were derived from the reorganization of it.

Q. Then you expected to become a stockholder in the reorganized company? A. Yes.

Q. You say that it was necessary, for your interest in that project to become effective, that it was necessary to arrange for some money. What did you do in arranging for that money?

A. I took the matter up with Brashears & Company, explained the proposition to them, showed them what the profit possibilities were, and succeeded in getting them to put up an additional \$20,000.00 to see if we could put the company back on its feet.

Q. How did you happen to get in touch with Brashears & Company?

A. I had known Martin Lathrop for many years. Lathrop [11] at that time was connected with Brashears & Company and I talked to him about that, and then through that, through Mr. Morgan in Mr. Brashears office and then Mr. Brashears.

Q. And you knew the type of business that Lathrop and Brashears were in?

A. Yes, sir. I knew they were a firm, G. Brashears & Company were in the business of selling securities, yes.

Q. You thought that you could arrange to obtain some money for them for the project?

(Testimony of Ralph W. Moore.)

A. Yes, that was my purpose in going to them.

Q. What sort of a deal did you make with them?

A. Well, finally we made a deal that of the promotion stock they were to receive 75 per cent for doing the financing and I was to receive 25 per cent for my services.

Q. Can you tell us just a little bit about what this reorganization looked like? You say the old Inland Public Service Company was in the area of Kings and Fresno Counties, and you were going to go ahead and reorganize it so that the promotional shares of the new company would be owned 25 per cent by you and 75 per cent by the Brashears interest?

A. Yes, that is correct.

Q. Could you say where the source was of the promotional shares that you and Brashears were to buy?

A. Well, the setup of the Inland Public Service Company was a holding corporation that owned all of the capital stock [12] of the Gas Fuel Service Company and the Kettleman-Lakeview Oil and Gas Company.

Q. Just a moment for the reporter to get those names, the Gas Fuel Service Company and——

A. Yes.

Q. And the Kettleman-Lakeview Oil and Gas Company, Ltd.

A. I don't recall whether they were Limited.

Q. Well, the Kettleman-Lakeview Oil and Gas Company?

A. Yes.

Q. You say that the Inland Public Service Com-

(Testimony of Ralph W. Moore.)

pany was the holding company for the Gas Fuel Service and the Kettleman Company?

A. That is right. The Kettleman-Lakeview Oil and Gas Company was the operating company to produce the gas and the Gas Fuel Service Company was the company to distribute it and which had the certificate of public convenience and necessity. The Inland Public Service Company was the only one that had any stock in the hands of the public, and it was the owner of the entire stock issue of both the Kettleman-Lakeview Oil and Gas Company and the Gas Fuel Service Company.

Q. In the reorganization of the Inland Company, what interest did the old Inland stockholders get out of the reorganized company?

A. Well, the Central California Utilities Corporation, which was organized to take over the Inland Public Service [13] Company, was authorized to issue 500,000 shares of stock, of which 250,000 were promotional shares, and 117,000 shares were exchanged for the then outstanding stock of the Inland Public Service Company on the basis of one share of Central California Utilities for three shares of the Inland Public Service.

Q. And there had been promotional shares, had there, in the old Inland Public Service Company?

A. Well, I would say yes. I was not thoroughly familiar with the entire setup, but there were.

Q. How much cash——

A. Yes, I recall now there were some.

(Testimony of Ralph W. Moore.)

Q. How much cash was necessary to make this reorganization? By that I mean in obtaining the promotional shares for yourself and also the ones that went to the Brashears interest, was it necessary to spend cash to do so?

A. You mean spend money to get the——

Q. To get the shares? A. Yes.

Q. Now——

A. No, we didn't spend any; the only money we spent was we bought a few shares from one of the original promoters named Savage, but there was no money spent for the purpose of obtaining the——

Q. In other words, you and Brashears came into the control [14] of this utilities project for practically nothing, with the hope of putting this money forward which it needed right at that time?

A. Yes.

Mr. Maiden: Just a moment. That is just a leading question. I object and ask that the witness' answer be stricken.

Mr. Walker: All right, I will work it out in a slightly different way.

The Court: The question was leading and the answer of the witness will be stricken.

By Mr. Walker:

Q. You have stated that no money was spent for the promotional shares?

A. Do you mean at the original, at the start of the project?

Q. That is right.

(Testimony of Ralph W. Moore.)

A. No, there was no money spent for it.

Q. What percentage of the total outstanding shares of the Central California Utilities was owned by you and Brashears?

A. Well, we had 250,000 shares, and there was, after the exchange, there was 117,000 in the hands of the public at that time.

Q. I see. And each of the shares had equal voting [15] rights?

A. It was all one class, all common stock.

Q. When you interested Brashears Company in this project, I think you have stated that the Brashears interests were to have 75 per cent of the promotional shares. Did you know what part in the picture the Capital Service Company was going to play?

A. Not at that time, no.

Q. Did it make any difference to you what part it did play?

A. No, it didn't make any difference to me, as long as the money was available.

Q. You were after the money, then?

A. That is right.

Q. How much money did you say was arranged for?

A. The initial amount was \$20,000.00.

Q. And \$20,000.00 was to be supplied by the Brashears interests?

A. That is right.

Q. For what purpose?

A. Well, the old Inland Public Service Company owed about, I think roughly about \$4,000.00 worth of bills up in that country, labor bills, supplies,

(Testimony of Ralph W. Moore.)

and one thing and another. There were two wells on the lease that at one time had produced a very large—both had produced very large quantities of gas. [16] We expected to drill those out, they had a cement plug in them, and get a supply of gas from that source, extend the pipe lines in the immediate territory, and we felt that that much money would be sufficient according to the best information we had.

Q. All right. Then with the \$20,000.00 what are the things that you said it was planned to do with that? Were there any other terms of the deal?

A. Well, the terms were—the terms of Brashear was that if the \$20,000.00 proved the project to be successful in that small local area, that he would then sell the remaining 183,000 shares to the public.

Q. Now, you have referred just now to some 183,000 shares. That is on top of the 250,000 promotional?

A. Yes. I thought I made that plain. There was a total issue authorized of 500,000 of which 250,000 was purely promotional stock. There were 117,000 shares in the hands of the public, which had been exchanged on the basis of one share of Central California for three shares of the old Inland Public Service, and then that left 183,000 shares in the Treasury of the Company, which would be available for sale.

Q. And it was intended to sell those if the expenditure of the \$20,000.00 made the project look good?

A. Yes, that was the plan.

(Testimony of Ralph W. Moore.)

Q. Now, in presenting this project to Mr. Brashers, did [17] you tell him anything with reference to what you thought the value of the project was?

A. Yes, I interviewed, I would say about 15 or 16 of the big gas customers up there, and I made a statement showing what the revenue would be, what the expenses—what the expenses would be, and what the resulting profit would be up to that point, at that time.

Q. Did you state anything to him other than submitting such figures as to what you thought the project would come to?

A. Oh, yes, I was very optimistic. I thought selling gas at 16 cents a thousand, which cost only about a cent and a quarter would produce a fair margin of profit and there was practically an unlimited market for it, for selling it in competition with electricity and some gas in that territory.

Q. You said you had made investigations of the project?

A. Of that portion of it that we were then considering rehabilitating, yes.

Q. Can you tell me a little more about what that investigation covered?

A. Well, that covered talking with the various farmers, ranchers, and some of the industries. For instance, there is a large milk drying plant just outside the city of Lemoore. They were buying gas from the Southern California Gas Company, I believe it was, and they were paying approximately

(Testimony of Ralph W. Moore.)

thirty cents for it. Our price was 16 cents. There was another large [18] outfit down at the little town of Corcoran, which is, I believe the J. D. Boswell Company. We talked to Mr. Boswell and with his engineers and they furnished us the bills that they had paid for electricity for pumping, and in that season, that was the season of 1935, as I recollect, the figures on the power bills were some \$32,000.00.

Q. What did that lead you to believe?

A. Then we took it around and converted that horse power back into gas at 16 cents and it would cost them roughly about \$7,500.00. I did that to feel out the market, to see what the prospects were for the sales of large quantities of gas.

Q. And did the user of the electricity see the figures that you presented or did you check them over with him, comparing the cost of gas and the electricity cost?

A. He did the figuring. His engineer did the figuring right there in Corcoran.

Q. I see.

A. I didn't know how to convert gas back to horse power in electricity, but he did.

Q. Did he express any thoughts about whether he preferred gas or electricity?

A. Oh, yes indeed, he was decidedly in favor of gas. We couldn't go into the City of Corcoran itself, but we could go up to the line and their propo-

(Testimony of Ralph W. Moore.)

sition was they were to build [19] a line out to where they took our gas.

Q. Were there any farmers out there that you contacted?

A. Yes, I think there were, if I remember correctly, there were about 12 customers on the old line that had previously been reached by the Inland Public Service Company.

Q. What would those farmers want with gas?

A. They wanted to pump water for irrigation.

Q. Then your investigation had led you into these inquiries. What did you conclude from it?

A. Well, I concluded from that if I could get 25 per cent of the company I would have a very decidedly fine proposition.

Q. You believed you would get a gas supply?

A. That we would get a gas supply.

Q. And what did you expect to do about obtaining a gas supply?

A. Well, the old Inland Public Service Company had one lease of 60 acres upon which there had been a producing gas well.

Q. Was it producing at the time?

A. No, not at the time we came into the picture. That was what wrecked the Inland Public Service Company. That well blew out.

Q. All right. Then what did you do to line up a gas supply? [20]

A. Then we secured a lease from Friend Anderson on about 750 acres of land on which there were

(Testimony of Ralph W. Moore.)

two wells that had produced very large quantities of gas over a substantial period and which had been sold to the Pacific Gas and Electric Company.

Q. Were they producing at the time?

A. No, they were not producing at the time. The Pacific Gas and Electric Company had taken out all their pipe, they laid a pipe up to those wells, connecting to their main line, and they had taken that out and they were not taking any gas from anybody in that territory.

Q. What was the status of those wells that you described?

A. Well, they had a cement plug in the bottom of each one of them turning off the gas so it couldn't come out.

Q. What did you hope to do about obtaining your own gas supply with reference to those wells?

A. Well, we hoped very much to just drill that cement plug out and put the wells back in production.

Q. Was there anything else that you thought of in lining up a gas supply?

A. Why yes, there were a number of different things, the Irma Investment Company had a well just off of our lease. It was capped, it was not plugged and they had been selling to the P.G. & E., so we knew that we could buy that well away [21] from them on the basis of paying for the gas as we took it out.

Q. Did the Inland Public Service Company at

(Testimony of Ralph W. Moore.)

the time you became interested in the project have a deal with the Irma?

A. They had had a lot of conversation, but it was in bankruptcy and they never had gotten to the point of making a definite deal with the referee.

Q. You refer to bankruptcy. Was it the Irma Company that was in bankruptcy?

A. I don't remember whether this—I think it was the Irma Investment Corporation.

Q. I mean it was not the Inland Company?

A. Oh, no, it was the Irma.

Q. Did you do anything else to try to line up a gas supply? A. You mean at that——

Q. At that particular time, yes.

A. Well, we drilled out our own well.

Q. I mean before you began operating yourself, in canvassing the field, you have stated now, that you talked with the customers or potential customers to sound out the market; then you stated that it was necessary to line up a gas supply. This is all your preliminary investigation now?

A. That is right. [22]

Q. Was there anything else done in the preliminary investigation with reference to seeing what gas supply might be available?

A. Nothing except to get the 750 acre lease from Friend Anderson.

Q. At the time you became interested in this project and made your investigation, was the Inland Public Service Company in operation?

(Testimony of Ralph W. Moore.)

A. No, not at that time. It had been until this well blew out. These were not potential customers. They were actual customers of Inland Public Service.

Q. Which customers were those?

A. These 12 or 15 that I interviewed.

Q. The farmers?

A. Yes, and ranchers there.

Q. Among these other—but these other large consumers potentially had not been served?

A. No, they had not been served.

Q. And because they expressed a desire for gas, what was your conclusion with respect to the size of the project you could develop?

A. Well, after making a preliminary investigation and getting money from Brashears, I went up all through Fresno County and all through that section and from all the conversations I had with the heads of the various farmers' organizations [23] and big users, the different big users, I could see where the gas company could sell around twenty-five to thirty million feet of gas a day for about seven months out of the year.

Q. And what did that mean in the way of dollars of income?

A. Well let's see. At 18 cents, it would be roughly \$5400.00 a day, wouldn't it? I can't multiply it in my head.

Mr. Maiden: Don't look at me Mr. Moore, because I can't figure.

(Testimony of Ralph W. Moore.)

By Mr. Walker:

Q. Do you recall having reached any tentative conclusion at the time of what this project might yield on an annual basis?

A. Are you talking now, Mr. Walker of the period when we were putting the \$20,000 into the project?

Q. No, I was talking about the preliminary investigation you made that would lead you to believe this was a good project?

A. After this first \$20,000.00 was spent, or at the time it was being spent, then I saw what I thought was the tremendous possibilities of profit, and I immediately started a lot of negotiations. We had a tremendous territory there from Tulare Lake away over here to the northern end of Fresno [24] County, and we were entirely surrounded by gas all through, the Superior Oil Company had a lot of gas wells that were shut in, the Fullerton Oil Company had gas wells that were shut in, the Pure Oil Company had a lot that were shut in, and had drilled four gas wells and they were shut in.

Q. And those were sources of gas that you were able to use?

A. That is right. At that time the Pacific Gas and Electric would not buy any gas from any of them.

Q. Did you have any hope of making the project succeed on the basis of its size when you went into it?

A. Well, yes, on that basis, that we went into it.

(Testimony of Ralph W. Moore.)

If we could have had another, oh roughly, 12 miles of pipe line, we could have reached this dried milk factory that was just outside of Lemoore.

Q. Was that the purpose of putting up this money to start with or was it for some other purpose?

A. No, the purpose of putting up the money to start with, was to get some gas out in the lines out of which these people had already been buying gas that were actual customers and had bought gas for quite some time.

Q. Yes.

A. And we had hoped to meet—to reach that Dried Milk—that was the only large customer outside of the ranchers that we had in mind when the \$20,000.00 was put up. [25]

Q. Then when you paid that money out, it was not in fact a going concern, as a loan on a term basis?

A. No, it was a pure speculation, pure gamble. There wasn't any——

Q. You have spoken at some length of the potentially productive wells in the Friend Anderson lease and on one or two other properties. At the time that you became interested in the project what was done to bring a gas supply in from those wells?

A. We drilled the cement block out of the first well and it came in wet.

Q. What does that mean?

A. Well, it means that the water had impreg-

(Testimony of Ralph W. Moore.)

nated the gas carrying structure there so that while we got plenty of gas we also got plenty of water.

Q. Could you use such a product? A. No.

Q. You couldn't put it into your line?

A. No.

Q. Did the well do you any good then?

A. No.

Q. That work that was done on that well that came in wet, let's just keep straight on what well we are talking about now. That was the well you say that had been plugged and was not in production when you became interested in the [26] project?

A. That is right.

Q. And after you became interested in the project, then work was done to drill this plug out?

A. That is right.

Q. So that you did produce a well with this \$20,000.00. A. Yes.

Q. When was the drilling done on that well, do you recall, generally?

A. My recollection of it, it was the early part of 1936, the latter part of 1935, or early in 1936.

Q. And you say it developed a water supply and consequently it was absolutely no good?

A. That is right.

Q. Were you able to bring in, with the expenditure of that \$20,000.00, any gas production at all?

A. No.

Q. Were any attempts made to bring in any supply of gas after this one well had been drilled and came in wet?

(Testimony of Ralph W. Moore.)

A. Yes, we drilled a new well.

Q. When was that?

A. That would be within a few weeks after the first one came in wet.

Q. Were you still using some of this \$20,000.00?

A. Yes, up to that time. [27]

Q. Did you have any of this money in the corporation, in fact, after 1936?

A. Well, my impression was it was the latter part of 1936 or 1937, in there. I am not definite about it.

Q. You have referred in your previous testimony to a well named the Irma. Can you tell us a little more about that, what it was and where it was?

A. Well, originally the firm of Wishon & Watson in Fresno, they are big operators up in that section, took this lease, I believed they owned 640 acres of this land. The Irma Investment Company was incorporated and took up the lease and Wishon & Watson then drilled the Irma No. 1, and Irma No. 2. There is a little confusion about the names. In some places, they are recorded as the Watson No. 1 and Watson No. 2.

Q. Was the No. 2 well in production?

A. Yes, they both produced.

Q. Were either of them in production when you became interested in the project?

A. No, neither one of them were. The No. 2 had had some sort of a minor cave-in, and I believe

(Testimony of Ralph W. Moore.)

that had been cemented off. The No. 1 was simply capped. It was not cemented.

Q. Could they have been brought back into production at any time, the No. 1?

A. Oh, yes, yes. [28]

Q. And did the Central California Utilities Corporation or any of its subsidiaries ever make use of the gas from Irma No. 1?

A. Yes, we made a purchase contract with the receiver to buy both wells for, I believe, \$25,000.00.

Q. That was in fact a well that was on your own property?

A. It was not on our property, no.

Q. How long did that Irma No. 1 supply gas for your use?

A. Well, it supplied it until it was wrecked, I think in 1937.

Q. It was wrecked. It was wrecked, you say. What wrecked it?

A. Well, the Shell Oil Company were making geophysical survey graphs of the whole territory and in putting down one of their shots, it evidently caved in the Irma No. 1 well, and it didn't produce any gas after that.

Q. That was some time in 1937, you say?

A. Yes, that is my recollection of it.

Q. What was done during 1937, if anything, to locate a gas supply?

A. Well, we—there was a Mrs. Irvine had taken a lease down below one of our leases and was drilling a well there. I talked with her on several occasions. [29]

(Testimony of Ralph W. Moore.)

Q. Did you borrow any money from Capital Service in 1937 to help you locate productive properties?

A. Yes, I believe it was—we borrowed, I believe it was \$14,000.00 just about that time.

Q. On top of the \$20,000.00?

A. On top of the twenty, yes.

Q. And no success came from your negotiations with Mrs. Irvine?

A. No. She had the same results that we had. She struck water instead of gas, or gas and water.

Q. Where was that, on your property?

A. No, that was the first well she drilled, was just off our property. In addition to this 750 acres of Friend Anderson, we had put some money up for 1500 acres from the Dudley Ridge.

Q. Did you do anything further to develop gas from the Dudley Ridge Company?

A. Yes, we discussed with them and Mrs. Irvine. We made her a proposition that we would give her the 1500 acres, and also that we would pay for the gas at five cents a thousand feet if she succeeded in producing a well, this well she was drilling was just off this land of ours and it came in wet, so she gave that idea up. Then I talked to a Mr. Nelson, who was in the oil business here, that we would sublet our lease on the Dudley Ridge Oil Company on condition that he pay no rent the [30] first year and drilled some wells, but our arrangement with

(Testimony of Ralph W. Moore.)

him was the same way that, that he was to have all the acreage that would exceed 250 acres and we would buy the gas from him for five cents a thousand.

Q. Did Nelson bring in any wells?

A. No, he didn't.

Q. How long a period of time did those attempts cover with Nelson and with Irvine?

A. Well, I think Nelson and Irvine and the Dudley Oil Company, we haven't brought that in yet, but they were in the picture. Those negotiations continued away through—I think through until 1941.

Q. Did any of the negotiations you had with the Nelson interests or Mrs. Irvine cost any money?

A. No.

Q. What induced them to drill?

A. Well, they would equally benefit if they drilled gas at 1200 feet and sold the gas for five cents a thousand, that is a fairly profitable operation.

Q. And they were willing to put up the money to drill on your leases and try to get a well for you because they would benefit?

A. Yes. Then of course at that time there was a great oil field going up through that whole territory and Shell spent thousands and thousands of dollars on geophysical surveys, [31] and there were wells being drilled all through that entire territory.

Q. Well, apparently numerous attempts had been

(Testimony of Ralph W. Moore.)

made to bring in wells on your leased property and none had come in. Did you think——

A. May I interrupt just a moment? That isn't quite correct. To understand the situation clearly, the first well that was drilled was drilled on the 60 acres of land that we had from Friend Anderson. That well came in, a very beautiful well, about 12,-000,000 cubic feet of gas a day, and when it blew out, and the Standard Oil and the other big gas operators that were interested in the Kettleman Hills all came down and attempted to shut it off, and they estimated that it was roaring at the rate of 40,000,000 feet of gas a day.

Q. When did this blow take place?

A. That took place before we went into it. I think it was the very early part of 1935. That was the basis on which we were interested in that entire field. That merely showed there was plenty there that we could get if we drilled the concrete out of the Pacific Gas. The records showed that they had taken more than 2,000,000 feet of gas a day out of that well. Assuming that on the other side we would have the same record, we found that it looked like a very interesting possibility, not only for gas output but for oil.

Q. But as a matter of fact, no wells were brought in on [32] your properties?

A. Not on our properties.

Q. Well, did you ever give up hope of bringing in one on your properties?

(Testimony of Ralph W. Moore.)

A. Well, along the latter—when the Pure Oil came into the picture we changed our—at least I changed my thoughts a little, because their development had started up at the upper end of the field of our franchise or of our certificate and came down.

Q. When did your negotiations with Pure Oil take place?

A. My recollection is sometime in 1938 or '39.

Q. And you say that they were developing north of it?

A. Yes, they were in Fresno County, in a little section called Chowchilla.

Q. Was Fresno County one of the counties covered by your certificate? A. Yes.

Q. Now, tell me a little bit more about why you were negotiating with Pure Oil?

A. Well, as I understood the story at that time, the Pure Oil was figuring on coming out here in the western territory and going into business and opening up the sale of gas and gasoline, and they drilled, I believe four wells in the lease that they had there. They were naturally looking for [33] oil, but they struck a very large supply of gas, no oil. They drilled in other sections, too, but this was the one that I was particularly interested in.

Q. Well, what was the basis of your negotiation with them?

A. Well, the idea of our negotiation with them was that I went over the whole story with them as I have given here, showing the predicted and in-

(Testimony of Ralph W. Moore.)

tended location of our lines, and the available amount of gas there, with Mr. Clark, who was western manager, went over the territory and looked the situation over and——

Q. In other words, you presented a possible outlet to them, to buy their gas from them?

A. Well, the basis of the deal was that we had to put in all the lines and they had probably 35 or 40,000,000 feet of gas available per day out of the well that they had already drilled, and our thought was at that time that we wanted all that gas, and they had gas and we wanted money.

Q. Then how did that state of negotiations compare with your original plans, at the time when you went into the project in 1936?

A. Well, of course, the thing on that basis had reached a size that was away beyond anything we had contemplated with \$20,000.00. That was one of the features that I had in mind when we first started, and we were trying to bring it about at [34] that time.

Q. Did you sound out the potential market for gas in Fresno County? A. Yes.

Q. How did that compare with the market in Kings County?

A. Oh, it was probably 20 times as great.

Q. And was that the basis of your statement that you expected to be losing money in the pipe line or extend a line that would cost a lot of money?

A. Well, Mr. Clark made some investigation

(Testimony of Ralph W. Moore.)

up there himself, and I went up there all through Fresno County and talked to very many, I would say about 35 or 40 of the other land owners, and we also contacted one of them in San Francisco who farmed about 6500 acres. We went all through that section and made a survey of what the possibility of gas would be.

Q. Then you have, yourself, no leases up in Fresno County? A. No.

Q. What happened to the leases that you had in Kings County?

A. Well, we gave one to Nelson to try to get him to drill, and then we quitclaimed the others back to the land owners.

Q. Why was that?

A. Well, they had a monthly rental provision in them [35] and that had been paid for a long while, and that took up quite a lot of money in rent, and others had drilled in our immediate vicinity, and the drilling in front of our leases were not successful in producing oil.

Q. When did this quitclaiming take place?

A. Well, frankly I——

Q. Do you recall generally with reference to your drilling activities or your negotiations with Irvine and Nelson?

A. It was after that time.

Q. Would you say that was 1937 or 1938?

A. I would think it would be in the latter part of 1938 or 1939, in there.

(Testimony of Ralph W. Moore.)

Q. Did you feel that the quitclaiming of those leases had any particular effect on this project?

A. No, I didn't feel so at that time because there had been about five different attempts to develop gas from that 1200 foot level and no one was successful. Apparently when the Friend No. 1 well blew out and after we got the first one, that evidently let water into the gas carrying structure of the whole field.

Q. Then, after you had quitclaimed your leases in Kings County, what did you expect would be the way the project could continue?

A. Well, at that time there was plenty of gas available. The Superior Oil Company had a number of wells shut off [36] down below us and Fullerton Oil Company had gas wells shut off below us.

Q. You mentioned something about Pure Oil.

A. No, that was another, Pure Oil was up north. These were down below Kings County, in the edge of Kern County, and I gathered in the negotiations with the Superior Oil and with the Fullerton Oil, those companies were ready to sell us gas if we had some money to lay some pipe line.

Q. Were you able to make any arrangements for a gas supply with those people?

A. No, the only thing we did, we permitted them to get them a market to sell their gas to the Southern California Gas Company.

Q. Not having made a successful negotiation with them, what effect did that have on your proj-

(Testimony of Ralph W. Moore.)

ect as a whole, which covered most of Fresno and Kings Counties?

A. Well, it had—as far as the local situation went, the Kings County end of it, it was a bit discouraging. As far as the general proposition went, I didn't feel that it had any particular ill effects on it.

Q. What do you mean by the general proposition?

A. Well, in general, the general proposition of Fresno County and Kings County, because we could connect with other oil companies.

Q. Why did you feel that as a general proposition it [37] did not particularly matter?

A. Well, I felt that at that time we could get a very large supply of gas from other people and they had plenty of money then, they were very frank in saying they were in opposition to the Southern California Gas Company, inasmuch as the Southern California Gas Company only wanted to give them too low a price, and Superior Oil Company was the same way, so I felt that there was opportunities of getting gas.

Q. And the thing you expected to do with the gas has been explained, what you wanted to do with the gas after you got the money.

A. Well, we wanted to sell that to the farmers particularly in the area, and we wanted to sell it to the dairy people, the Dried Milk Company, the people have got a condensery down there, con-

(Testimony of Ralph W. Moore.)

densery, is that what you call it? As I stated before, they were paying approximately \$32,000.00 for electricity and it would be about \$7,000.00 for gas. Then we had a few customers lined up that were taking other gas in.

Q. You were certain then as to the potential market? A. Oh, yes.

Q. And you did consult the market, and did you negotiate with any others about the market?

A. Yes, there were very serious negotiations conducted with the City of Fresno.

Mr. Maiden: Have him put dates on these things, Mr. Walker.

Mr. Walker: All right. That was going to be my last question.

Mr. Maiden: Well, I'm sorry.

By Mr. Walker:

Q. So to tie in now the conditions that existed after you had quitclaimed your leases, that you have stated was perhaps some time in 1939—well, let me withdraw that question and phrase it in a little different way. Could you compare the picture of this project, generally speaking in 1939, with 1936, insofar as what you thought the project was and could be worked into?

A. Well, in my opinion it was very much better in 1939 than it was in 1936, despite the ill fortune we had had.

Q. Why was that?

A. Well, because in 1936, I didn't have the faint-

(Testimony of Ralph W. Moore.)

est idea that you could sell the immense quantities of gas that you could. I conducted negotiations with the—I believe it was the mayor of Visalia, and the mayor of one of the other towns up there. They had organized under the public utility laws of California, a local district, and they were all willing to buy gas.

Q. This was in 1939?

A. Well, very frankly, Mr. Walker, I am sorry, the date on these, I can't remember the date. They—these evolved [39] in years. Remember the negotiations that we were engaged in, but naturally I can't—

Q. All I wanted you to state for the record now, is what you thought the project looked like in 1939, compared with what it looked like in 1936.

A. Well, in my personal opinion, it was a great deal better proposition in 1939 than it was in 1936.

The Court: You mean from the standpoint of acquiring gas and selling it, from the standpoint of customers?

The Witness: Well particularly from the standpoint of customers. Am I permitted to just go a little off the direct question?

By Mr. Walker:

Q. Sure.

A. There was at that time prior to, well, up through 1939 and into 1941, apparently the Southern California Gas and the Pacific Gas and Electric had all the gas they wanted. And they were not buying any there now. They had torn out a lot of

(Testimony of Ralph W. Moore.)

their line from the Irma and from the Friend No. 1 and all those wells, and they just stood there and didn't want to buy any gas. Now, the Pure Oil Company was coming out, an independent, and if you gentlemen know anything about the oil business it is just a little bit difficult to come out and fight the Standard and the Union and a few others like that, and they were looking for a way to get this oil. If we had had [40] the resources to have gone on, it would have been a very different picture in a few years, another \$20,000.00. There was a market for the gas and the business was almost fantastic. The Southern California Gas was selling gas to that particular market at the time for 34 cents a thousand cubic feet.

Mr. Maiden: When was that?

The Witness: That was in 1935 and 1936, when we went into it. Those are the figures that were told me, and I believe they are practically correct. Our price would be 16 cents. If you can convert your kilowatt hour electricity into gas, you will find that with the price of gas at 16 cents, it is just about one quarter of the price of a horsepower of electricity.

By Mr. Walker:

Q. Both in 1939 and 1936, were you able immediately to get to making some money, or did you have to do something first?

A. Well, in 1936, we had to get a supply of gas. That was the basic feature.

Q. You say you needed a supply of gas in 1939,

(Testimony of Ralph W. Moore.)

too? A. Yes.

Q. You referred to the destruction of this Irma No. 1. I show you what purports to be a copy of a letter dated June 1, 1937, addressed to your attention of the Gas Fuel Service Company and ask you if you have seen that before? [41]

A. Yes, I saw the original of that.

Q. What is that letter?

A. Well, that is a notification that the Irma well had caved in and was not going to produce any more gas.

Mr. Walker: The Petitioner offers this letter in evidence as the Petitioner's next exhibit after the stipulation.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 9.

(The document above referred to was received in evidence and marked Petitioner's Exhibit No. 9.)

PETITIONER'S EXHIBIT NO. 9

(Copy of copy)

Stratford, California

June 1, 1937

Gas Fuel Service Company

508 Security Building

Los Angeles, California

Attention: Mr. R. W. Moore

Gentlemen:

The Irma No. 1 has had a cave-in. Will make

(Testimony of Ralph W. Moore.)

only small amount of gas. May work itself out all right but cannot tell.

It caved last Saturday when they were shooting for tests on the seismograph near Veco 7-12.

Will watch well very close as it may stop entirely.

Yours truly,

/s/ JESS WELTON.

Admitted T.C.U.S. May 5, 1948.

The Court: We will suspend a few minutes.

(Short recess taken.)

The Court: Proceed.

By Mr. Walker:

Q. You have stated that Petitioner's Exhibit No. 9 was a letter you had received notifying you of the destruction of Irma No. 1. After having received notice of that destruction, what did you do?

A. I notified the Shell Oil.

Q. Why was it the Shell Oil Company that you notified?

A. Because they were the ones that did the damage.

Q. I show you what purports to be a copy of a letter dated June 2, 1937, addressed to the Shell Oil Company and [42] ask if you have seen that letter before?

A. Yes, I wrote the original.

(Testimony of Ralph W. Moore.)

Q. What is it?

A. Well, that is the letter notifying the Shell Oil Company that they had wrecked the Irma No. 1 well.

Q. In that letter you state that the destruction of Irma No. 1 was a very serious matter to Gas Fuel Service. Would you explain that a little bit further?

A. Well, it was serious because it shut off our supply of gas.

Q. Did it have anything to do with your certificate of convenience and necessity?

A. Well, I didn't think at the time it would particularly affect the certificate, because we still thought we could get some gas from other sources, but very frankly, and I presume that is what you want, I anticipated that our company would be able to collect some very substantial damages from Shell Oil Company for it. We were naturally putting our side of the case up to them from that standpoint.

Q. Then when you mentioned in there that it might endanger your franchise or your certificate, you were doing it for the purpose you have just stated?

A. Well, yes, the primary purpose of the matter, Mr. Walker, was to start what we expected would be a successful suit against the Shell Oil Company, or a settlement of a suit. [43]

Mr. Walker: Petitioner offers this letter as the next exhibit.

(Testimony of Ralph W. Moore.)

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 10.

(The document above referred to was received in evidence and marked Petitioner's Exhibit No. 10.)

PETITIONER'S EXHIBIT No. 10

(Copy of Copy)

June 2, 1937

Shell Oil Company
1008 West Sixth Street
Los Angeles, California

Attention: Land Department

Gentlemen:

Confirming our several conversations of today relative to the shutting off of the gas supply from the "Irma" No. 1 Well.

We are enclosing copy of letter from our Field Foreman, Mr. Jess Welton and are today advised by Mr. Welton in a telephone conversation that on last Friday, May 29 or Saturday, May 30, he was at the residence of James Skaggs, located in the Irma lease, when a seismograph crew reported to be employed by your organization made several shots within approximately one-quarter mile from the "Irma" No. 1 Well, and shortly thereafter gas practically ceased to flow from the well, and that at the time of our telephone conversation, 2:15 p.m. today, the gas practically ceased coming from the

(Testimony of Ralph W. Moore.)

well. He states that this seismograph crew reported to be employees of your company have been working in that vicinity for several days and have been conducting a seismograph survey running in a generally northeast and southwest direction approximately one-quarter mile east of the "Irma" No. 1 well which is located in Section 7, Township 23 South, Range 22 East, past the "Veco" 7-12 Well which is located in Section 12, Township 23 South, Range 19 East, and across the county road, then cutting in a generally northeast and southwest direction across Dudley Ridge.

Mr. Welton states that it appears to be general knowledge from conversations with the various members of this crew that they are employees of your company and that this work is being done for your account.

Our company is a public utility corporation holding a franchise from the Railroad Commission of the State of California for the sale of gas in Kings and Fresno Counties, California, with approximately 38 miles of pipe line laid from the "Irma" No. 1 Well through the farming section of the Tulare Lake Bed to approximately the outskirts of the town of Stratford, California, and is now and has been under this franchise selling gas for water pumping and domestic uses to its various customers in this territory.

As stated to you over the telephone, the shutting off of the gas from the "Irma" No. 1 Well is a

(Testimony of Ralph W. Moore.)

very serious matter to this corporation, as gas from this well is our present only available supply and interruption of this service may seriously interfere with our franchise rights.

In discussing the matter with your Mr. Merritt, he stated that he would endeavor to secure further information and call the writer back. We were somewhat surprised that if these men are your employees, a matter of this serious consequence would be left without your attention, as nothing further was heard from Mr. Merritt, and it was only after considerable effort that we finally were placed in touch with some representative of your company.

As stated during our last telephone conversation with your office, our immediate concern is to secure gas from some source to supply the requirements of our customers, and we are delivering this letter to you by special messenger with the expectation that if the shutting off of our gas supply has been caused by your employees, your company will take the necessary steps to supply gas for the temporary use of our company until such time as some satisfactory adjustment of the matter can be arrived at.

Very truly yours,

GAS FUEL SERVICE
COMPANY,

By /s/ R. W. MOORE,
President.

RWM S

Enc.

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. Did you call the destruction of that well to the attention of the Railroad Commission?

A. Yes, I believe that shortly after that we notified the Railroad Commission to that effect.

Q. I show you what purports to be a copy of a letter dated July 7, 1937, addressed to the Railroad Commission, and ask if you have seen that before?

A. Yes. I wrote the original.

Q. And what is the import and the purpose of the letter?

A. Well, Mr. Crenshaw had called me and asked me about it, and I had told him the facts of the case and I felt that, as they were the ones who had control of the certificate of necessity, they should naturally be notified of what had taken place up there.

Q. I notice in your letter it refers to the Watson No. 1. Is that the same thing as the Irma No. 1?

A. Yes, that is the—as I have explained before, there was a little confusion about the names, and the Watson No. 1 was the name under which it was recorded in the Bureau of Mines.

Mr. Walker: Petitioner offers this letter in evidence as its next exhibit.

Mr. Maiden: What is the date of that letter?

Mr. Walker: July 7, 1937.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 11.

(The document above referred to was received in evidence and marked Petitioner's Exhibit No. 11.)

PETITIONER'S EXHIBIT No. 11

(Copy)

Central California Utilities Corporation

508 Security Building

Los Angeles

TR 5091

Gas Fuel Service Company

Kettleman-Lakeview

Oil & Gas Co., Ltd.

July 7, 1937

Railroad Commission of the State of California

708 State Building

Los Angeles, California

Attention: Mr. C. E. Crenshaw

Gentlemen:

Confirming our telephone conversation of this morning.

At approximately 11:00 o'clock on the morning of Friday, May 29, 1937, a crew of men who were employed by the Shell Oil Company of California, conducting a seismograph survey in Kings County, California, fired a "shot" within approximately one-quarter mile of the "Watson" No. 1 gas well operated for the account of this company. Immediately after the firing of this "shot" the flow of gas from our well rapidly diminished and a short time thereafter had practically ceased.

The "Watson" No. 1 well is located in Section 7, Township 23 South, Range 22 East, M. D. B. & M.,

(Testimony of Ralph W. Moore.)

Kings County, California, and is the source from which this company has been securing a supply of dry gas which it sells to agricultural users in that portion of the Tulare Lake Basin lying in a north-westerly direction from Dudley Ridge and extending to within a short distance of the town of Stratford.

Our company is a public utility corporation holding a franchise from the Railroad Commission of the State of California for the sale of gas in Kings and Fresno Counties, California, and has approximately 38 miles of pipe line laid from the "Watson" No. 1 well through the farming section of the Tulare Lake Bed as above referred to, and has been continuously selling gas under this franchise for water pumping and domestic uses to its various customers in this territory.

Immediately upon receiving notice from our field foreman of the shutting off of our gas supply, we communicated with the Shell Oil Company as per copy of letter attached hereto, and since that time have had several conferences with members of their land department in an attempt to secure some adjustment of the matter, including a supply of gas which would permit this company to continue the service to its customers, but have thus far received nothing but indefinite verbal statements from them.

We are now conducting negotiations with the Natural Gas Corporation of California at Taft,

(Testimony of Ralph W. Moore.)

California, trying to secure from them a temporary supply of gas for the use of our various customers.

Our company recently completed the drilling of an additional gas well on Dudley Ridge, but unfortunately when placed on production it developed a sufficient flow of water to prohibit its use, and we are now concluding arrangements under which an attempt will be made to shut off this water and place the well on production.

We have received numerous complaints from our customers who are dependent upon a supply of gas to operate their pumping equipment, and to whom the value of a gas supply is vital at this period of the year when the pumping season is about to start.

Our company is exerting every possible effort to resume service, and will keep your office fully advised of developments.

Very truly yours,

GAS FUEL SERVICE
COMPANY,

By /s/ R. W. MOORE,
President.

RWM S

Enc.

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. After the destruction of that Irma well, what was done to line up a gas supply?

(Testimony of Ralph W. Moore.)

A. Well, we tried several sources to procure gas. One was the gas company that was supplying gas to the little town of Kettleman City, the other was the Southern California Gas Company.

Q. Were such arrangements concluded with either of those companies?

A. Yes, with the Southern California Gas Company.

Q. I show you what purports to be a copy of a letter dated July 21, 1937, addressed to the Railroad Commission and ask if you have seen that letter before? [45]

A. Yes, I have seen it before.

Q. What is the import of that letter?

A. Well, immediately after——

Mr. Maiden: If your Honor, please, I think those letters should be allowed to speak for themselves.

Mr. Walker: All right, I was trying to identify that for the record. Perfectly all right with me.

By Mr. Walker:

Q. Do you know of your own knowledge, that the matters stated in that letter are accurate?

A. Yes.

Q. And are they accurate?

A. They are accurate.

Mr. Walker: The Petitioner offers this letter in evidence as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 12.

(Testimony of Ralph W. Moore.)

(The document above referred to was received in evidence and marked Petitioner's Exhibit No. 12.)

PETITIONER'S EXHIBIT No. 12

(Copy of Ltr.)

Central California Utilities Corporation
508 Security Building
Los Angeles

July 21, 1937

Mr. C. E. Crenshaw
Railroad Commission of the State of California
State Building
Los Angeles, California

Dear Sir:

Confirming our telephone conversation of this morning, I am very glad to say that we now have gas in the line being supplied to us by Southern California Gas Company in the Standard Oil Pumping Station, Kettleman Hills.

This puts us in a position to care for all the customers on the line, and we have been assured by Southern California Gas Company of their cooperation in taking care of our needs to the fullest extent possible.

We want to thank you very much for your aid in this matter and hope shortly to be able to report some additional connections in that territory.

("Testimony of Ralph W. Moore.)

Again thanking you for your cooperation, we remain

Very truly yours,

GAS FUEL SERVICE

COMPANY,

By /s/ W. MARTIN LATHROP,

Vice-President.

WML S

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. How long did the Southern California Gas Company supply gas to the Central California Utilities, or its subsidiaries?

A. Why, it was a matter of comparatively few months. [46] I would say possibly three or four months, somewhere in there.

Q. And did it stop supplying gas?

A. Yes.

Q. Why was that?

A. Because we were not able to pay the bill for it.

Q. Why were you unable to pay the bill?

A. We didn't have any money in the first place, and in the second place, the losses of the gas as we purchased it from their meter and delivered to our customers, the line loss was so heavy that we were only receiving, I would say approximately 25

(Testimony of Ralph W. Moore.)

or 30 per cent of the gas that was finally delivered to the customers' plants being lost in the line.

Q. And you say that because of that you were not able to pay your bill to the gas company?

A. Well, no, the revenue from the sale of the gas was approximately 25 per cent of what we were paying for the gas, and we had no other source of funds, and we couldn't pay the bill.

Q. And then they shut off your gas, is that right?

A. That is right.

Q. I show you what purports to be a copy of a letter dated November 1, 1937, addressed to Gas Fuel Service Company, and ask if you have seen that before? A. Yes, I have seen that before.

Mr. Walker: Petitioner offers this letter in evidence [47] as its next exhibit.

Mr. Maiden: No objection. I didn't get the date of that.

Mr. Walker: November 1, 1937.

The Court: It will be received in evidence as Petitioner's Exhibit No. 13.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 13.)

(Testimony of Ralph W. Moore.)

PETITIONER'S EXHIBIT No. 13

(Copy)

Southern California Gas Company

810 South Flower Street

Los Angeles

November 1, 1937.

Wm. Moeller, Jr.

Vice President

In charge of Natural Gas

Production and Transmission

Gas Fuel Service Company

508 Security Building

Los Angeles, California.

Attention of Mr. W. Martin Lathrop,

Vice President

Gentlemen:

Referring to agreement dated July 21, 1937, between us, under which we are selling you gas delivered into your pipeline system near the Standard Oil pump station on Section 19, Township 22, Range 19, Kings County, California, we call your attention to the fact that gas bills rendered since the middle of August have been unpaid, and that there is now delinquent an amount in excess of \$1,112.86.

Pursuant to the terms of said agreement, this letter will serve as official notice of our election to terminate and cancel said agreement, effective ten days from date hereof, unless the amount de-

(Testimony of Ralph W. Moore.)

linquent to date is fully paid before the expiration of said ten days period. Upon the termination of this agreement, the Southern California Gas Company will apply any deposit which you have made, against the delinquent amount, and if such deposit shall be insufficient to cover such bill, the Company shall have the right to collect the balance of such gas bill by appropriate Court proceedings.

Yours very truly,

SOUTHERN CALIFORNIA
GAS COMPANY,

By /s/ WM. MOELLER, JR.,

Vice President.

By Mr. Walker:

Q. Now, your Irma No. 1 has been destroyed and you begin to buy gas from the Southern California Gas Company and they shut off your gas supply in the latter part of 1937. What was your opinion with reference to the merits of this project at that time?

A. Well, I thought that the proposition was still a very good proposition, that it had a temporary setback.

Q. When the Southern California Gas Company cut off your gas supply, then what did you do about the operation of the company?

A. I believe it was about that time that we started some negotiations with the Fullerton Oil to see if we couldn't get gas from their field.

(Testimony of Ralph W. Moore.)

Q. Did you say the Pure Oil?

A. No, the Fullerton Oil.

Q. Do you recall whether the company got permission of [48] the Railroad Commission with reference to discontinuing its service?

A. I believe we asked for a temporary discontinuance of service in the area.

Q. And when was that, do you recall?

A. My recollection of it was it was in the early part of 1938, but I am not definitely positive.

Q. Attached to the stipulation, Mr. Moore, as Joint Exhibit 5-E, is what has been stipulated to be a copy of an application filed by Gas Fuel Service Company to the Railroad Commission. I will ask if you have seen that before?

A. Yes, I have seen that before.

Q. Is that the application for temporary suspension of service? A. Yes.

Q. I show you Joint Exhibit 6-F, to the stipulation which has been stipulated to be a copy of the opinion of the Railroad Commission acting upon the application for temporary suspension of service, and ask if you have seen that before.

A. Yes, I have seen that before.

Mr. Maiden: Would you give the date of those two documents, just for the benefit of the Court?

Mr. Walker: Yes. That application is dated November 10, 1937.

The Court: If they are in the record, they [49] speak for themselves, do they not?

(Testimony of Ralph W. Moore.)

Mr. Walker: That is right. I was merely calling this witness' attention to them for the purpose of his knowing that that went on, so that they can be tied into the stipulation and his personal recollection.

By Mr. Walker:

Q. You have stated that the gas you had been purchasing from Southern California Gas Company had leaked through your lines. Do you recall why your lines leaked?

A. Well in the first place they were very cheaply built lines, they were practically all second hand pipe. A considerable portion of them were laid on top of the ground. Another portion of them were below the Lake Bed, the Tulare Lake Bed, and there had been a very severe flood and the entire area of the Tulare Lake Bed had been filled with water, and between all of these factors, the lines were in extremely poor condition.

Q. Did you have any inquiries from your customers about the fact that you no longer had gas in the line? A. Yes, we had many of them.

Q. Do you remember having received a letter from any of them making such inquiries?

A. I received one letter from a woman up there who had been buying small quantities of gas. She addressed a letter to the company. [50]

Q. I show you a copy of what purports to be a letter from Mrs. C. H. Meyers?

A. Yes, that is the woman.

(Testimony of Ralph W. Moore.)

Mr. Walker: Petitioner offers this letter as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 14.

(The document above referred to was received in evidence and was marked Petitioner's Exhibit No. 14.)

PETITIONER'S EXHIBIT No. 14

(Copy of Copy)

Stratford, Calif.

Kettleman-Lakeview

Oil & Gas Co. Ltd.

I would like to know when you intend to let us have gas again?

What are we to do for heat this winter while you are temporarily discontinued? I would like an answer to this right away so we can make other arrangements for heating if you are not going to let us have gas.

Yours truly,

/s/ MRS. C. H. MEYERS.

At least say if we are to have gas soon.

Admitted T.C.U.S. May 5, 1948.

(Testimony of Ralph W. Moore.)

By Mr. Walker:

Q. Did you reply to Mrs. Meyers?

A. Yes, I answered the letter.

Q. I show you what purports to be a copy of a letter dated—under date of September 12, 1938, addressed to Mrs. C. H. Meyer, that's the way it is addressed, and ask if you have seen it before?

A. Yes, I wrote it.

Q. This is your reply to Mrs. Meyers?

A. That is my reply.

Mr. Walker: Petitioner offers this in evidence as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 15. [51]

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 15.)

PETITIONER'S EXHIBIT No. 15

(Copy of Copy)

Central California Utilities Corporation

September 12, 1938.

Mrs. C. H. Meyer,
Stratford, Calif.

Dear Madam:—

We regret to advise that it will be impossible for us to resume distribution of gas until such time

(Testimony of Ralph W. Moore.)

as there is a demand for pumping purposes that will warrant such resumption.

You of course are aware that our charter does not provide for domestic service except where there is also a demand for gas for water pumping purposes.

It is our understanding that water conditions in the Tulare Lake section are such that at present there is no demand for water pumping and thus far we have had no request for gas for that purpose.

Yours very truly,

GAS FUEL SERVICE
COMPANY.

R. W. MOORE,
President.

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. Do you recall having written to the Railroad Commission with reference to the leaking lines and this flood damage which you have mentioned?

A. Yes, I think I wrote them with reference to it.

Q. I show you what purports to be a copy of a letter dated October 8, 1938, addressed to the Railroad Commission and ask if you have seen that before? A. Yes, I wrote the letter.

Q. Do you recall whether that was the first letter

(Testimony of Ralph W. Moore.)

you wrote to the Railroad Commission with reference to this flood damage?

A. I believe that was the first letter, yes.

Mr. Walker: Petitioner offers the letter in evidence as his next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 16.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 16.)

PETITIONER'S EXHIBIT No. 16

(Copy)

Central California Utilities Corporation

October 8, 1938

Railroad Commission of the
State of California
706 State Building
Los Angeles, Calif.

Attention: Mr. Crenshaw.

Gentlemen:

Confirming our telephone conversation of the 7th. inst.

The gas service of this Company in Kings County, California, is now temporarily discontinued, under authority of Decision No. 30477 of your Commission, owing to the flooded condition of the land in

(Testimony of Ralph W. Moore.)

the territory where we were serving gas, principally for water pumping purposes but including a small amount used for domestic purposes by customers also using the gas for water pumping.

According to the best information obtainable from the former customers of our system it will be well into the year of 1939 before the present flood water recedes to a point where it will be necessary for those customers to require resumption of our service of gas for water pumping purposes.

We have had but one request for domestic service and that from a customer who did not sign our regular contract for gas for water pumping purposes but purchased small quantities of our gas for that purposes at irregular intervals. Copy of that request, and our reply thereto, are attached herewith.

The list of customers being served by us at the time of discontinuance of service, together with class of service furnished is:

	Water Pumping	Domestic
Consolidated Farms	Yes	Yes
Lester Owens	Yes	Yes
J. H. Hatteson	Yes	Yes
Fred Newton	Yes	Yes
J. R. Newton	Yes	Yes
F. E. Squire	Yes	Yes
O. C. Heck	Yes	Yes
Forrest Riley	No	Yes
C. H. Meyer	Irregular	Yes
Stratford School District	No	Yes

(Testimony of Ralph W. Moore.)

The address of all of the above customers is Stratford, California.

Yours very truly,

GAS FUEL SERVICE

COMPANY,

/s/ R. W. MOORE,

President.

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. Do you recall, Mr. Moore, of actually having made an investigation of the customers in the Kings County, with [52] reference to their needs for gas service? A. Well, at what time do you mean?

Q. During the time shortly after you had had your gas shut off by Southern California Gas Company?

A. Yes. I went up there and talked with the majority of the customers.

Q. And did you talk with them after these—after the floods had damaged your lines?

A. Yes.

Q. I show you, Mr. Moore, what purports to be copies of letters dated February 24, 1939, and March 1, 1939, addressed respectively to the Central California Utilities Corporation and to the Railroad Commission. I will ask you if you have seen those letters before?

(Testimony of Ralph W. Moore.)

A. I have seen them before. I wrote this one.

Q. Do you remember receiving the February 24, 1939 letter?

A. You mean receiving it in the mail?

Q. Receiving it for action?

A. Yes. I remember that.

Q. And the March 1, 1939 letter is your reply to it? A. Yes.

Mr. Walker: Petitioner offers these letters as its next two exhibits.

Mr. Maiden: No objection. [53]

The Court: They will be received in evidence as Petitioner's Exhibits 17 and 18.

(The documents above-referred to were received in evidence and marked Petitioner's Exhibits Nos. 17 and 18.)

PETITIONER'S EXHIBIT No. 17

(Copy)

Los Angeles

February 24, 1939

File G. O. 58-A

Central California Utilities Corporation

508 Security Building

Los Angeles, California

Attention: Mr. R. W. Moore, President
Gentlemen:

This will acknowledge your report of October 8, 1938, regarding the temporary discontinuance of

(Testimony of Ralph W. Moore.)

gas service by your company due to the flooded conditions in the territory supplied by the Gas Fuel Service Company. In your report you stated—
“According to the best information obtainable from the former customers of our system it will be well into the year of 1939 before the present flood water recedes to a point where it will be necessary for those customers to require resumption of our service of gas for water pumping purposes.”

At this time we would request that you submit a report advising us as to the present status of this matter and also if possible, as to when you expect to resume gas service on the Gas Fuel Service Company system.

Trusting this will be given your prompt attention, we are,

Yours very truly,
RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA

By WILLIAM H. GORMAN,
Director, Southern District

CEC/gw

Admitted T.C.U.S. May 5, 1948.

(Testimony of Ralph W. Moore.)

PETITIONER'S EXHIBIT No. 18

(Copy)

Central California Utilities Corporation

March 1, 1939.

Railroad Commission of the
State of California.

708 State Building

Los Angeles, California.

File G. O. 58-A

Attention: Mr. William H. Gorman

Director, Southern District.

Gentlemen:—

Answering your letter of the 24th, ultmo.

While there has been some reduction in the flooded area referred to in our letter of October 8, 1938 it has not been of sufficient extent to call for resumption of the service formerly rendered by our Company and in that immediate section we do not anticipate any appreciable demand for gas for water pumping purposes until well into the summer of this year.

Yours very truly,

GAS FUEL SERVICE

COMPANY.

/s/ R. W. MOORE,

President.

Admitted T.C.U.S. May 5, 1948.

(Testimony of Ralph W. Moore.)

By Mr. Walker:

Q. Do you know, Mr. Moore, why the Railroad Commission had written you the letter of February 24, 1939?

A. There is so many of them it is a little difficult for me to locate them all. May I ask you just what was your question now?

Q. I wondered if you knew or had any idea why the Railroad Commission was writing that letter of February 24th.

A. Well, I had understood, in my conversations with various people there, that this was a public utility under their jurisdiction and they were following the progress of it as they did all others, and were asking for information.

Q. Did you feel that the Railroad Commission was about to take any action with reference to the certificate of convenience and necessity, in writing that letter?

A. No, I didn't think so.

Mr. Maiden: If your Honor please, I object to that as calling for a conclusion of this witness, what he feels that the Commission was going to do would be incompetent.

The Court: Objection is sustained. [54]

Mr. Maiden: I would like to ask that the answer be stricken.

The Court: The answer will be stricken.

By Mr. Walker:

Q. Do you recall, Mr. Moore, of ever having any negotiations at any time in 1939, looking to a dis-

(Testimony of Ralph W. Moore.)

position by the Capital Service or by the Central California Utilities Corporation of its position in the project? In other words, did anybody ever approach you to see if they could make a deal with you?

A. Why, yes. R. H. Anderson, who was the principal owner——

Mr. Maiden: If your Honor please, I object to this witness testifying to what some other person told him, upon the ground that it would be hearsay.

Mr. Walker: Well, if the Court please, this man was negotiating——

Mr. Maiden: I think that Mr. Moore can tell what he did toward negotiating, what he said and so on and so forth, but I object——

Mr. Walker: I will reframe the question, so that we will elicit from Mr. Moore only what occurred, because that is all I wish to go into anyway.

The Court: That is better.

Mr. Walker: All right. [55]

By Mr. Walker:

Q. Will you state, Mr. Moore, whether you made any representations with reference to this project in interesting other people in it?

A. Why, yes, R. H. Anderson, who was the majority holder in the leases which we previously had, called me up one day. I went over to the Biltmore

(Testimony of Ralph W. Moore.)

Hotel and talked with him. He asked if the company would be willing to——

Mr. Maiden: Your Honor, I object to him stating what this gentleman said. He can tell what, Mr. Moore can tell what he said to Mr. Anderson, but I submit that if they want to show what Mr. Anderson said, they should present him as a witness. It would be pure hearsay.

By Mr. Walker:

Q. Will you confine your remarks, Mr. Moore, to what you told Mr. Anderson?

A. Well, I told Mr. Anderson that I only had a minority interest in the proposition, but that I would submit the matter to Mr. Brashears and the others interested and I thought we would be in a position to make him an offer for our interests in the entire proposition.

Q. Did you take the matter up with Mr. Brashears? A. Yes.

Q. And did you submit such a proposition to Mr. Anderson? [56] A. I did.

Q. I show you what purports to be a copy of a letter dated March 16, 1939, addressed to Mr. Anderson and ask if you have seen that?

A. Yes, I wrote the letter.

Mr. Walker: Petitioner offers the letter in evidence as its next exhibit.

Mr. Maiden: No objection, your Honor.

The Court: It will be received in evidence as Petitioner's Exhibit 19.

(Testimony of Ralph W. Moore.)

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 19.)

PETITIONER'S EXHIBIT No. 19

503 Security Building.

510 South Spring Street.

Los Angeles, California.

March 16, 1939.

Mr. R. H. Anderson.

Haberfelde Building.

Bakersfield, California

Dear Sir:

The Gas Fuel Service Co. was incorporated on January 3, 1933, under the laws of the State of California, with an authorized capital of 1,000 no par value shares, of which 200 shares have been issued and are now owned by the Central California Utilities Corporation.

Gas Fuel Service Co. holds a Certificate of Public Convenience and Necessity (Franchise) issued by the Railroad Commission of the State of California, on July 3, 1933, under which it is permitted to operate as a public utility for the sale of gas for water pumping and other purposes in Kings and Fresno Counties, Calif., copy of the order of the Railroad Commission granting such franchise being attached hereto.

Operations under this franchise are temporarily

(Testimony of Ralph W. Moore.)

suspended owing to the flooded condition of the Tulare Lake farming section and lack of funds with which to extend the lines into other sections. Such suspension was authorized by the Railroad Commission of the State of California under date of January 3, 1938 and at the same time an increase in gas rates to Consumers in Kings County of from 16 cents per 1000 cubic feet to 20 cents per 1000 cubic feet was granted by the Commission. No request for increase in rates in Fresno County from the present established rate of 17 cents per 1000 cubic feet was asked of the Commission as no gas was being sold in that county.

Physical assets of Gas Fuel Service Co. consist of approximately 30 miles of 4", 3" and 2" pipe line extending from the present Friend well near Laguna Vista through portions of the Tulare Lake farming section and to within one-half mile of the Town of Stratford, Calif., together with meters and regulators necessary for the metering and regulating of gas delivered to customers.

There are issued and outstanding 317,363 shares of the capital stock of the Central California Utilities Corp. of which 252,400 are owned by the Capital Service Co. and R. W. Moore. The Board of Directors of Central California Utilities Corp. consists of two of the executives of the Capital Service Co. and R. W. Moore, so that entirely within the control of Capital Service Co. and R. W. Moore lies all of the legal and/or other necessary authority for the

(Testimony of Ralph W. Moore.)

disposal of the entire assets, franchise, etc., of the Gas Fuel Service Co. The most feasible method of transfer of these assets would be through transfer of the ownership of the capital stock of Gas Fuel Service Co. which can be purchased for \$40,000.00 in cash.

Yours very truly,

R. W. MOORE.

Admitted U.S.T.C. May 5, 1948.

By Mr. Walker:

Q. At the time you made the representations to Mr. Anderson as to what you have just stated, were the flood conditions still in being?

A. Yes. There were certain portions of the land that were still under water.

Q. And were any operations under way by the project at that time, in other words, were they distributing gas?

A. No, they were not distributing gas.

Q. Did you ever hear from Mr. Anderson with further reference to this? A. No.

Q. Did you have any further correspondence with the [57] Railroad Commission after the exchange of correspondence to which you have frequently referred? A. Yes.

Q. I show you what purports to be a copy of a letter dated August 14, 1939, and ask if you have seen that before? A. Yes, I have seen that.

(Testimony of Ralph W. Moore.)

Mr. Walker: Petitioner offers the August 14 letter in evidence as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 20.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 20.)

PETITIONER'S EXHIBIT No. 20

(Copy)

Los Angeles

August 14, 1939

G. O. 58-A

Central California Utilities Corporation

508 Security Building

Los Angeles, California

Attention: Mr. R. W. Moore, President

Gentlemen:

Under date of March 1, 1939, you wrote us advising that while there had been some reduction in the flood area on your system, you did not anticipate any appreciable demand for gas service for water pumping until well into the summer of this year.

We would therefore appreciate your advising us at this time as to the present status of this matter and also, if possible, when you expect to resume gas

(Testimony of Ralph W. Moore.)

service on the Gas Fuel Service Company's system.

Trusting we may have an early reply we are,

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA

By WILLIAM H. GORMAN

Director, Southern District

CEC:LC

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. I show you what purports to be a copy of a letter dated August 16, 1939, and ask if you have seen that before?

A. Yes, I saw that letter. I dictated the letter over the telephone. I was not in the office of Brashears at that time, but I dictated the reply.

Q. You say you were not at Brashears office at that time? A. No.

Mr. Walker: Petitioner offers the August 16, 1939 letter in evidence.

Mr. Maiden: No objection. [58]

The Court: It will be received in evidence as Petitioner's Exhibit 21.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 21.)

(Testimony of Ralph W. Moore.)

PETITIONER'S EXHIBIT No. 21

(Copy)

Central California Utilities Corporation

August 16, 1939

Railroad Commission of the State of California

708 State Building

Los Angeles, California

Attention Mr. William H. Gorman,

Director, Southern District

Gentlemen:

Answering your communication of August 14, 1939.

While the flood conditions in the Tulare Lake area in which our gas lines are laid have somewhat improved, they are still such that there is no demand for gas for water pumping purposes.

Consultation with various of our previous customers in that territory indicates that they will not be in position to use gas from our service until the late fall or early winter of this year.

Yours very truly,

CENTRAL CALIFORNIA

UTILITIES CORP.

By /s/ R. W. MOORE (Per J.A.A.)

President.

RWM:JAA

Admitted T.C.U.S. May 5, 1948.

(Testimony of Ralph W. Moore.)

By Mr. Walker:

Q. You stated you were not in Brashears' office at that time. Where were you?

A. I was out with the Timm Aircraft then.

Q. How long had you been at the Timm Aircraft?

A. I believe I went out there in May, 1939.

Q. And you say you left Brashears' office. Were you ever working for Brashears? A. No.

Q. Why did you say you were in his office?

A. Well, because the Central California Utilities had its headquarters there and he furnished the office space that we occupied.

Q. Did you ever receive a salary from Brashears or from these corporations? A. No.

Q. Did you have any further correspondence with the Railroad Commission?

A. Yes, I believe the correspondence continued for quite some time after that.

Q. I show you a copy of a letter dated December 13, [59] 1939, addressed to Central California Utilities and ask if you have seen that before?

A. Yes, I have seen that.

Mr. Walker: Petitioner offers the letter in evidence as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit 22.

(Testimony of Ralph W. Moore.)

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 22.)

PETITIONER'S EXHIBIT No. 22

Railroad Commission
of the
State of California
Fifth Floor, California State Building
Civic Center
San Francisco, Cal.

Los Angeles

December 13, 1939

File G. O. 58-A

Central California Utilities Corporation
508 Security Building
Los Angeles, California

Attention: Mr. R. W. Moore, President.

Gentlemen:

In response to our request you advised us under date of August 16th that the flood conditions in the Tulare Lake area had somewhat improved but at that time there had been no demand for gas service for water pumping purposes. You further stated that after consulting a number of your previous customers in this territory it did not appear that gas service would be rendered by the Gas Fuel Service Company until the late fall or early winter of this year.

(Testimony of Ralph W. Moore.)

Since we have not heard further from you to date we would be pleased to have you advise us as to the status of this matter and as to the possible date when gas service will be resumed in this area by the Gas Fuel Service Company.

Trusting this will be given your prompt attention, we are

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA

By /s/ WILLIAM H. GORMAN,

Director, Southern District.

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. How was that letter called to your attention, Mr. Moore?

A. I believe Mr. Woodard read it to me over the telephone.

Q. At that time you were no longer at the office?

A. No, I was out with Timm.

Q. Do you recall having replied to that letter?

A. Yes, I believe I answered it.

Q. I show you what purports to be a copy of a letter dated December 26, 1939, and ask if you have seen that? A. Yes, I wrote that.

Q. That is your reply to the letter of December 13? A. Yes.

Mr. Walker: Petitioner offers the letter in [60] evidence as its next exhibit.

(Testimony of Ralph W. Moore.)

Mr. Maiden: No objection.

The Court: It may be received in evidence as
Petitioner's Exhibit No. 23.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 23.)

PETITIONER'S EXHIBIT No. 23

December 26, 1939

Railroad Commission of the
State of California
State Building
Los Angeles, California

Attention: Mr. William H. Gorman,
Director, Southern District.

Gentlemen:

Since receipt of your letter of December 13, 1939, we have carefully checked the situation in the Tulare Lake Basin and according to the best advice which we received, there will be no possibility of resumption of our gas service in that territory prior to the early part of the summer of 1940.

Very truly yours,

CENTRAL CALIFORNIA
UTILITIES CORP.

R. W. MOORE,
President.

Admitted T.C.U.S. May 5, 1948.

(Testimony of Ralph W. Moore.)

By Mr. Walker:

Q. Did you have any more correspondence with the Railroad Commission?

A. Yes, I believe there were letters after that date.

Q. I show you a copy of what purports to be a letter dated June 18, 1940, and ask if you have seen that before?

A. Yes, I have seen that before.

Mr. Walker: Petitioner offers the letter in evidence as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received as Petitioner's Exhibit No. 24.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 24.)

PETITIONER'S EXHIBIT No. 24

(Copy)

Los Angeles
June 18, 1940
File G. O. 58-A

Central California Utilities Corporation
508 Security Building
Los Angeles, California

Attention: Mr. R. W. Moore, President.

Gentlemen:

In response to our request, you advised us under

(Testimony of Ralph W. Moore.)

date of December 26, 1939, that you had carefully checked the situation in the Tulare Lake Basin and according to the best advice you had received, there would be no possibility of resumption of service by the Gas Fuel Service Company until the early part of the summer of 1940.

Since we have not heard further from you, we would be pleased to have you advise us of the present status of this matter and the possible date when service will be resumed in this area.

Trusting we may have your prompt reply, we are

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA

By WILLIAM H. GORMAN,
Director, Southern District.

CEC:S

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. Did you reply to that letter? A. Yes.

Q. I show you what purports to be a copy of a letter dated June 27, 1940, and ask if you have seen that? [61] A. Yes. I wrote the letter.

Q. Is that your reply to the letter of June 18?

A. Yes.

Mr. Walker: Petitioner offers the letter in evidence as its next exhibit.

Mr. Maiden: No objection.

(Testimony of Ralph W. Moore.)

The Court: It will be received in evidence as Petitioner's Exhibit No. 25.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 25.)

PETITIONER'S EXHIBIT No. 25

(Copy)

Central California Utilities Corporation

June 27, 1940

Railroad Commission of the State of California
California State Building
San Francisco, California

Attention: Mr. William H. Gorman

Gentlemen:

The delay in replying to your letter of June 18 has been due to the time necessary to secure the information requested by you.

So far as we can determine at the moment, there will be no need for gas service from this corporation until the Spring of 1941, as practically all of the territory previously supplied by us is well supplied

(Testimony of Ralph W. Moore.)

with water until that time and will consequently have no need for our gas for pumping purposes.

Yours very truly,

CENTRAL CALIFORNIA

UTILITIES CORPORATION

/s/ R. W. MOORE,

President.

rwm;b

Admitted U.S.T.C. May 5, 1948.

By Mr. Walker:

Q. Did you have any other correspondence, Mr. Moore, with the Railroad Commission?

A. Yes, there was other correspondence.

Q. I show you a copy of a letter, or what purports to be a copy of a letter dated March 17, 1941, and ask if you have seen that?

A. No, I don't have any recollection. You mean seeing the original letter?

Q. Yes, seeing it or having it read to you?

A. I believe Mr. Woodard read that to me over the telephone.

Mr. Maiden: Is that the letter of May 17, 1941 to the Central California Company?

Mr. Walker: Yes. [62]

Mr. Maiden: I will stipulate it is a genuine letter, your Honor.

Mr. Walker: Petitioner offers the letter of May 17, into evidence as its next exhibit.

(Testimony of Ralph W. Moore.)

Mr. Maiden: No objection.

The Court: It will be received as Petitioner's Exhibit No. 26.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 26.)

PETITIONER'S EXHIBIT No. 26

(Copy)

Los Angeles

March 17, 1941

Central California Utilities Corporation

508 Security Building

Los Angeles, California

Application—No. 21581

Gentlemen:

Under date of March 4th our Engineer, Mr. Carl E. Crenshaw, telephoned your office relative to the status of the restoration of gas service by the Gas Fuel Service Company in the vicinity of Hanford and Stratford, California.

It is our understanding that it is your intention to permanently abandon gas service in this area. Under date of December 1, 1937 the Commission held a public hearing at Stratford, in connection with your Application No. 21581—in which you requested permission to temporarily discontinue service in Kings County and to revise certain gas

(Testimony of Ralph W. Moore.)

rate schedules. The Commission's order, No. 30477, was issued January 3rd, 1938, permitting a temporary discontinuance of service as requested in Application No. 21581.

This temporary discontinuance of service was for the purpose of repairing your gas lines and it was estimated that this work would be completed within 60 to 120 days. Subsequently, under date of June 16th, 1938, we received a telephone call from your Mr. Moore advising that the entire gas system of the Gas Fuel Service Company was under water as a result of a flood and he asked permission to discontinue gas service as such a condition constituted a hazard.

From time to time we have subsequently received letters from you advising as to the possible time when the Gas Fuel Service Company would resume gas service to customers in Kings County. The most recent communication was received on June 27th, 1940, in which Mr. Moore advised us that so far as could be determined there would be no need for gas service from the Gas Fuel Service Company until the spring of 1941, as practically all of the territory previously supplied by this company is well supplied with water.

Under the circumstances, in consideration it is your desire to abandon gas service in this area, it would be necessary that you make a formal application to this Commission, requesting permission to abandon such service.

(Testimony of Ralph W. Moore.)

In order that our files on this matter may be brought up-to-date, we would ask that you advise us as soon as possible as to your intentions regarding the restoration of gas service by the Gas Fuel Service Company.

Trusting this will have your early attention, we are,

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA

By WILLIAM H. GORMAN,
Director, Southern District.

CEC-s

Admitted May 5, 1948 T.C.U.S.

By Mr. Walker:

Q. Do you recall of having talked on the telephone to anyone in the office of the Railroad Commission about the date of that letter, about March, 1941? A. No, I don't recall that.

Q. You see that it states that you had talked to them over the phone?

A. I believe that is correct.

Q. Do you recall whether you replied to that letter?

A. Well, it would be my impression that I did, but——

Q. I show you what purports to be a copy of a

(Testimony of Ralph W. Moore.)

letter dated March 25, 1941, and ask if you have seen that before?

A. Yes, I wrote that letter.

Q. Was that in answer to the Commission's letter of March 17? A. Yes. [63]

Q. Which had been read to you over the phone?

A. Yes.

Mr. Walker: Petitioner offers the letter of March 25, 1941 in evidence.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 27.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 27.)

PETITIONER'S EXHIBIT No. 27

March 25, 1941

Railroad Commission of the State of California
Fifth Floor, California State Building
Civic Center
San Francisco, California

Attention: Mr. William H. Gorman,
Director, Southern District

Gentlemen:

The delay in answering your letter of March 17 has been caused by negotiations which we are now conducting with certain interests looking forward

(Testimony of Ralph W. Moore.)

to the possible resumption of the Gas Fuel Service Company under its franchise. These negotiations are progressing as rapidly as possible and it is our hope that within a short period of time we will be able to submit some definite proposition for resumption of service. However, in the event these negotiations are not successfully concluded we will take up with the Commission the matter of abandonment of the franchise now held by the Gas Fuel Service Company.

CENTRAL CALIFORNIA
UTILITIES CORPORATION
R. W. MOORE,
President.

Admitted T.C.U.S. May 5, 1948.

By Mr. Walker:

Q. Do you recall whether around that time in March, 1941, you had written any other letters or made any representations in regard to possible sale or disposition of the project?

A. Yes, I recall that.

Q. Can you explain the circumstances under which such action was taken by you?

A. Mr. Woodard called me and asked me if I would write to Raphael Dechter and give him the complete setup of the entire proposition.

Q. Did you write such a letter?

A. Yes, I did.

(Testimony of Ralph W. Moore.)

Q. I show you what purports to be a copy of a letter dated March 25, 1941, addressed to Raphael Dechter, and ask if you have seen that? [64]

A. I wrote that, yes.

Q. Was that the letter you wrote Mr. Dechter at Mr. Woodard's request? A. Yes.

Mr. Walker: The petitioner offers the March 25 letter, 1941, to Mr. Dechter, in evidence.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 28.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 28.)

PETITIONER'S EXHIBIT No. 28

March 25, 1941

Mr. Raphael Dechter
417 South Hill Street
Los Angeles, California

Dear Mr. Dechter:

At the request of Mr. George C. Woodard of G. Brashears & Company I am writing you with reference to the Central California Utilities Corporation and its two subsidiary companies, the Gas Fuel Service Company and the Kettleman-Lakeview Oil & Gas Company. The Central California Utilities Corporation is a California corporation organ-

(Testimony of Ralph W. Moore.)

ized to act wholly as a holding corporation for the entire outstanding stock of the Gas Fuel Service Company and the Kettleman-Lakeview Oil & Gas Company, the stock of these two corporations comprising all of the assets of the Central California Utilities Corporation. This corporation has outstanding approximately 317,000 shares of \$1.00 par value common stock, this one class of stock being the only class of stock authorized for this corporation. Of this outstanding stock approximately 67,000 shares is in the hands of the general public, the remaining 250,000 shares being owned jointly by the Capital Service Company and the writer, the entire 250,000 shares being held in escrow under certain instructions of the Commissioner of Corporations of the State of California.

The Gas Fuel Service Company is a California corporation organized for the purpose of conducting a public utilities business in the distribution of dry gas for domestic consumption in the counties of Kings and Fresno, exclusive of service to incorporated cities; the general intent of this franchise being to permit this company to sell dry gas principally for water pumping purposes in the agricultural districts of Kings and Fresno Counties. It holds a franchise granted by the Railroad Commission of the State of California, which franchise is still effective, and did have franchises from the Supervisors of both Kings and Fresno Counties for the laying of its required gas transmission lines.

(Testimony of Ralph W. Moore.)

While these two franchises have not been definitely cancelled by the Supervisors of these two counties, it would be my opinion that a certificate of renewal would have to be secured from both these Boards of Supervisors prior to undertaking any work in connection with laying gas transmission lines. The outstanding capital stock of the Gas Fuel Service Company consists of 200 shares of \$100.00 par value common stock (this being the only class of stock authorized to be issued by this corporation) all of which 200 shares is held by the Central California Utilities Corporation.

The Kettleman-Lakeview Oil & Gas Company was originally organized as an operating company to hold certain gas leases and to drill for and supply dry gas to the Gas Fuel Service Company for sale by that company to the general public under the charter held by it. The capital stock of this company consists of 22,000 shares of \$5.00 par value common stock (this being the only class of stock to be issued by this corporation) all of which is held by the Central California Utilities Corporation.

The Gas Fuel Service Company formerly operated a gas distributing system extending from certain wells in the Tulare Lake Basin in a northerly and easterly direction to within a short distance of the town of Stratford and serving approximately 20 users of gas in the agricultural section between these wells and the town of Stratford. This line was of a temporary nature and after the flooding

(Testimony of Ralph W. Moore.)

of the area in the vicinity of Tulare Lake the pipe was sold and taken up by the purchaser so that the Gas Fuel Service Company now does not have any gas distributing lines or any physical assets other than its franchise.

The Kettleman-Lakeview Oil & Gas Company formerly held leases on approximately 3,000 acres of land in the Tulare Lake Basin, all of which leases were forfeited, and this company does not now have any physical assets.

During the time that the affairs of the above three corporations were active, they had very excellent prospects in that there was a large demand for gas from the various large ranchers in the franchise territory of the Gas Fuel Service Company and potential possibilities of selling large quantities of gas to various industries located within this franchise territory and the further possibility of selling gas to some of the large cities in Kings and Fresno Counties, this latter purpose to be accomplished by running its lines to the city limits and having these cities connect their present gas systems with this line, all of which would be strictly within its franchise rights. Negotiations were conducted with the City of Fresno who at that time was interested in purchasing large quantities of gas, and the Central California Utilities Corporation went so far as to conduct extensive negotiations with the Pure Oil Company who, at that time, were the owners of several gas wells in the Chowchilla

(Testimony of Ralph W. Moore.)

section, all of which were large producers of gas but which were then shut in.

In the various negotiations which we had with the Pure Oil Company, the City of Fresno, several large potential commercial users of gas, and with many of the larger ranchers, it was entirely feasible at that time to have sold several million feet of gas per day provided a permanent supply of gas could have been secured and money provided for the building of the lines. I am not personally familiar with the situation at the moment but from the latest information available I am of the opinion that if a permanent supply of gas could be secured and money provided for the laying of the necessary lines the market is still available and I believe the price of 16c per cubic foot which the Gas Fuel Service Company was authorized to charge for its delivered gas could be somewhat increased.

It is somewhat difficult to outline in detail and in letter form the entire situation with reference to the possibilities existing for a successful development of a gas distributing system in Kings and Fresno Counties such as authorized by franchise of the Gas Fuel Service Company, but if the matter has any real interest to the parties with whom I understand you are to take it up, I would be very glad to discuss the matter in detail with you and/or

(Testimony of Ralph W. Moore.)

them and furnish any other information desired which it may be possible to secure at that time.

Yours very truly,

CENTRAL CALIFORNIA
UTILITIES CORP.

R. W. MOORE,
President.

RWM:es

cc—Mr. G. C. Woodard

G. Brashears & Company

Admitted May 5, 1948 T.C.U.S.

By Mr. Walker:

Q. Do you recall having yourself talked to Mr. Dechter following your writing of that letter?

A. Yes, sir, I think he called me up for some little additional information and stated that the negotiations that he was working on looked favorable.

Mr. Maiden: Your Honor, I object to that, and move to strike that part of the answer.

The Court: Sustained. Answer stricken.

By Mr. Walker:

Q. Will you just state whether or not you made any further representations to Mr. Dechter?

A. I cleared up one or two little matters, particularly with reference to franchises from the county—from the two [65] counties, Kings and Fresno Counties.

(Testimony of Ralph W. Moore.)

Q. Do you recall whether in 1941 or any time after this letter to Mr. Dechter, you made any representations to any other people regarding this project?

A. Well, there were negotiations with a man named Ben Dudley.

Q. Who is he?

A. Dudley was the original discoverer of the Lost Hills Oil Field, and he had for many years been engaged in the oil business. He had done a lot of work on Dudley Ridge. In fact that is where the ridge secured its name from, Dudley Ridge.

Q. What sort of representations did you make him?

A. Why, he wanted to get a record of the——

Q. I am afraid we are going to walk into some more objections, now, Mr. Moore.

Mr. Maiden: Yes, you are.

By Mr. Walker:

Q. I just want to know what representations you made to him, not what he said to you.

A. Well, I made the representation to him that the property could be bought at a reasonable price, provided he could assure us that the people he was dealing with were legitimate and had the money to buy it.

Q. I show you what purports to be a copy of a letter [66] dated August 21, 1941, and ask if you have seen that before?

A. Yes, I wrote it.

(Testimony of Ralph W. Moore.)

Mr. Walker: The Petitioner offers that letter into evidence as its next exhibit.

Mr. Maiden: No objection.

The Court: It will be received in evidence as Petitioner's Exhibit No. 29.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 29.)

PETITIONER'S EXHIBIT No. 29

(Copy)

August 21, 1941

Mr. Ben B. Dudley
Victor Hotel
Los Angeles, California

Dear Ben:

There is enclosed herewith letter requested by you addressed to the State Mining Bureau, Division of Oil and Gas, authorizing them to furnish you any information you desire with reference to the dry gas produced by us from the Dudley Ridge well. If you have any difficulty in procuring this information from them, there is on file in the office of G. Brashears & Company in the filing cabinet where the Kettleman-Lakeview Oil & Gas records are kept a folder marked "Division of Oil and Gas" in which are the monthly reports made by the Kettleman-Lakeview Oil & Gas to the Division of

(Testimony of Ralph W. Moore.)

Oil and Gas on the production we have. In case you are not able to procure the desired information from the State Mining Bureau, if you will show this letter to Mr. George C. Woodard in Brashears' office he will make this folder available to you for the purpose of your procuring the desired information.

If you or your associates develop any interest in the franchise along the lines we discussed in Los Angeles yesterday, we will be interested in taking the matter up with you.

Yours very truly,

R. W. MOORE

RWM:es

cc—Mr. G. C. Woodard

Admitted May 5, 1949 T.C.U.S.

By Mr. Walker:

Q. You made a reference a moment ago, Mr. Moore, to the fact that you had supplied Mr. Dechter with additional information regarding franchises from Kings and Fresno Counties. What representations were those?

A. Well, in addition to the certificate of convenience and necessity, we had to have a franchise from each one of the counties of Kings and Fresno wherever we crossed a public road. Those franchises called for a certain amount of revenue based on the

(Testimony of Ralph W. Moore.)

gross sales, and we never had paid the county any—the sales never had reached the point, the minimum called for.

Q. Did you ever yourself take action to obtain such a franchise from either county?

A. No, no, they were already obtained when the Inland Public Service Company secured them in the first place. [67]

Q. And what was it again that you told Mr. Dechter about that?

A. Well I think in my letter I referred to that, and he asked me if they had been cancelled. Is that all right?

Mr. Maiden: That is all right.

By Mr. Walker:

Q. Did you know of your own knowledge if they had been cancelled? A. No, no.

Q. Why did you refer to that at all in your letter to him?

A. Well because I wanted Mr. Dechter to have all of the facts, and to turn everything over to him that I could supply, to the very best of my ability.

Q. Do you recall having mentioned to Mr. Dechter anything about the pipe lines?

A. I believe at that time the pipe lines had been taken up.

Q. And do you know the circumstances upon which they were taken up?

A. Why, yes. The company owed, I don't know, six or seven hundred dollars worth of local taxes,

(Testimony of Ralph W. Moore.)

which they were not in position to pay. The lines were absolutely of no value as gas transmission lines. We had this offer from Friend to buy them for, I believe \$2,000.00 and I recommended to [68] Mr. Woodard and Mr. Brashears that we sell them.

Q. Why did you go into such detail in presenting this picture to Mr. Dechter?

A. I don't—

Q. Well, you have written a three page letter to him, which is a fairly carefully worked out statement. I wonder if you were interested in getting anything yourself out of this project?

A. I don't know as I just understand your question. You mean in the way of commission or something of that kind?

Q. No. You said that you held a 25 per cent interest in the promotional shares.

A. That is right.

Q. Were you hoping to obtain something for those as the result of these negotiations?

A. Oh, certainly.

Q. And did you feel that you could have obtained something for yourself?

Mr. Maiden: If your Honor please, I object to that as calling for a conclusion of the witness upon an issue—

The Court: It is a leading question. Sustained.

Mr. Maiden: And it is a leading question, too.
By Mr. Walker:

Q. Did you have any reason to believe that you could obtain anything yourself from this project?

(Testimony of Ralph W. Moore.)

Mr. Maiden: Your Honor, I object to it upon the same ground.

The Court: Sustained.

By Mr. Walker:

Q. From your previous connection with the project to which you have testified rather at length, I would like to ask whether you felt that there was any material difference in the prospects for this project along in 1941, than they had had at previous times?

A. No, I still felt that all through that period that if the deal could be cleaned up and there was some adjustment could be made of the promotional stock that it was still quite strongly possible to interest others in the proposition and make it a really producing and successful company.

Q. How long did you have that opinion?

A. Well I had it until—I would say it was along perhaps in April or May of 1942.

Q. Did your opinion change then?

A. Yes, it changed materially, then because the entire gas situation was completely changed at that time. There was no gas and no possibility of getting the gas.

Q. Why was that?

A. Well, because everybody was using twice as much as they ever had before, and even in the territories like the [70] Los Angeles territory that gas up there is available through transmission lines to the Los Angeles territory, part of it is available there.

(Testimony of Ralph W. Moore.)

Q. What was there in 1942, to your knowledge, that produced that situation?

A. Well, there was a tremendous demand for gas, which raised the price of it.

Q. What made the demand, do you know?

A. Well, the war was on and industry and agriculture and everything else was booming very strongly.

Mr. Maiden: In other words, there was a greater demand for gas in 1942.

The Witness: Yes, yes.

By Mr. Walker:

Q. Did that greater demand that existed in 1942 influence your opinion as to what could be worked out of this project?

A. Well, I felt frankly that all of the gas that had been proven, the Pure Oil, the Superior Oil and the Fullerton Oil and several others, at the time we were conducting the negotiations and up until 1942, they were still prospects for purchases of this gas system or suppliers, I meant to say. At that time the P.G.&E.—

Q. That was because of the gas supply they had?

A. Yes. [71]

Q. And in 1942 they had no supply to meet such conditions?

Mr. Maiden: I object to that, your Honor as being a leading question. He is leading his witness, and I hate to have to keep objecting.

Mr. Walker: That is perfectly all right.

(Testimony of Ralph W. Moore.)

The Court: Sustained.

By Mr. Walker:

Q. Let us just start with a clean question. Here in 1942 what was this again now that led you to believe that this project could not be developed?

A. In 1942, I was quite thoroughly convinced that the big gas companies, the Pacific Gas and Electric and Southern California Gas, and the Shell Oil had made very extensive preparations to buy all of the gas that was available throughout that entire territory. Shell Oil had built a pipe line from Kern County all the way through to San Francisco.

Q. What does that have to do with your project?

A. Well, because it let out all of these people with their interest in the proposition when they built the line down there that took all the Fullerton Oil Company and Superior Oil Company gas.

Q. What do you mean by interest in the proposition?

A. Well, we had already discussed the matter with them at length, and they still evidenced some interest. [72]

Q. In what way? What was their connection to be?

A. Well, their connection frankly, was getting, having a chance to market their gas when they couldn't market it to the Southern California Gas, then that made them market it through the Central California Utilities.

(Testimony of Ralph W. Moore.)

Q. And these conditions which you have just testified about in 1942, when did they come into being?

A. Well, as far as I was personally concerned, in February, along in March or April in 1942, I tried, I started to find out if the condition still existed, if there was still a possibility that we might procure gas from some of these people and I found decidedly that there was not.

Mr. Walker: No further questions.

Mr. Maiden: Your Honor, what time do you intend to stop? At 12:00 o'clock? If you do, I would prefer waiting until after lunch to commence my cross-examination.

The Court: Well, off the record.

(Discussion off the record.)

The Court: Very well, gentlemen. We will suspend until 1:30.

(Whereupon at 11:50 a.m., a recess was taken until 1:30 p. m. of the same day.) [73]

Afternoon Session

1:30 p.m.

The Court: The witness may resume the stand.

(Testimony of Ralph W. Moore.)

Whereupon,

RALPH W. MOORE

called as a witness for and on behalf of the Petitioner, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Maiden:

Q. I believe you stated, on direct examination, Mr. Moore, that you were not connected with Capital Service, Inc. at the time you arranged for the purchase or reorganization of the Inland Company in 1936?

A. No, I had no connection with Capital Service.

Q. Had you ever had any connection with Capital Service, either as an officer or as a stockholder?

A. No.

Q. You were not a stockholder in Capital Service, Inc.?

A. No.

Q. Did you become a stockholder in Central California Utilities Corporation?

A. Well, I had 25 per cent of the bonus stock.

Q. That is the promotional stock?

A. Promotional stock, yes. [74]

Q. Was that promotional stock put in escrow with the Corporation Commissioner?

A. I believe it was put in the Seaboard Bank or the Bank of America.

Q. In escrow under orders of the Corporation Commissioner?

A. Yes.

(Testimony of Ralph W. Moore.)

Q. Was that promotional stock ever released by the Corporation Commissioner?

A. Not to my knowledge.

Q. Now, at the time you took over from Inland Company, you first had California Utilities Corporation organized, is that correct?

A. Well, when we took over all the original—we took over the original promoters' shares under an agreement and after we had that agreement, then we organized the Central California Utilities Corporation.

Q. And the Central California Utilities Corporation then took over lock, stock and barrel, the two former subsidiaries of the Inland, that is the Gas Fuel, and the Kettleman Lakeview Oil Company, is that right?

A. Yes, that is correct.

Q. And the Central California Utilities Corporation became the sole owner of those two subsidiaries, is that correct? [75]

A. Yes.

Q. And that was true from 1936 on through 1942?

A. Yes.

Q. Did the California Utilities Corporation ever acquire any other properties than the stock of the Gas Fuel Service Company and the Kettleman Lakeview Oil Company?

A. No, I don't know whether the Dudley Ridge oil lease was taken in their name or not, but they did not acquire any physical property of any kind.

Q. Can you tell the Court whether or not the

(Testimony of Ralph W. Moore.)

only asset that the California Utilities Corporation had in 1936 clear on through to 1942 was the entire outstanding stock of these two subsidiaries?

A. Yes, that is all the assets they had.

Q. Now, this initial \$20,000.00 that was needed by the Central California Utilities Company in 1936, where did that money come from?

A. I believe the first \$4,000.00 of it, \$3,000.00 I believe was put up by Brashiers and I put up a thousand. Then the \$20,000.00 came from the Capital Service Corporation, to repay Brashears and myself for the initial money we put up.

Q. In other words, then the initial money that was put up by you and Mr. Brashears, of approximately \$4,000.00 plus the initial \$20,000.00 was put up by Capital Service, Inc., the Petitioner in this case? [76]

A. Yes.

Q. Now, can you tell me, Mr. Moore who approached the Capital Service, Inc., the petitioner in this case, with respect to their investing in the Central California Utilities Corporation?

A. No, I couldn't tell you that.

Q. You don't know through what intermediary or source then, they became interested in this California Utilities Corporation? And actually agreed to make these investments?

A. Not of my own knowledge, no.

Q. Now, when the California Utilities Corporation took over the entire—that is took over the entire stock of the Gas Fuel Service Company and

(Testimony of Ralph W. Moore.)

the Kettleman Lakeview Oil Company in 1936, isn't it a fact that the Gas Fuel Service Company had several miles of gas pipe line laid and meters and so forth? A. Yes, that is true.

Q. Now, how many miles of gas pipe line did they have at that time, to the best of your recollection? A. Approximately 32 miles.

Q. And where was that 32 miles located? Was that located in Kings County or in Fresno County?

A. No, all in Kings County.

Q. All in Kings County? A. Yes. [77]

Q. Did the Gas Fuel Service Company own any gas pipe line or had they laid any gas pipe line in Fresno County? A. None whatever.

Q. They never did? A. No.

Q. Now then, in addition to the gas pipe lines of approximately 32 miles in Kings County that the Gas Fuel Company had in 1936, what other physical properties in connection with those lines, did the Gas Fuel Service Company have in 1936?

A. Didn't have any.

Q. Well now, the gas pipe lines, they did have meters that were attached to customers' houses or lines? A. Well, yes.

Q. Like they do in the cities.

A. That is right. There was a meter at each customer's house, either in his house or in his field, on his property.

Q. On his property? A. Yes.

Q. Did it have any automobiles?

(Testimony of Ralph W. Moore.)

A. It bought a Chevrolet truck, but I couldn't tell you without looking at the records whether it was the Gas Fuel Service or the Central California that owned the truck. I think it was the Gas Fuel Service, because it was used in their business. [78]

Q. In their business, did they have any kind of enclosed houses or anything like that along their gas pipe line at that time? A. No.

Q. Now I believe you stated that when California Utilities Corporation took over the two subsidiaries in 1936, that no gas was being distributed?

A. That is right.

Q. By the Gas Fuel Service Company?

A. That is correct.

Q. And I believe you stated that the reason for that was that a well that had been supplying gas to them had been exploded?

A. Well, the technical term would be blown out, so it is just about the same.

Q. Blown out? A. Yes.

Q. Who held title to the well that was blown out, Mr. Moore?

A. That was the Kettleman Lakeview Oil and Gas Company.

Q. All right. Now then, the other subsidiary, the Kettleman Lakeview Company, was it the purpose of that subsidiary, and is it not a fact that that subsidiary was to and did hold title to the gas leases and wells for the purpose of [79] supplying to its affiliate, the Gas Fuel Service Company, the gas

(Testimony of Ralph W. Moore.)

that it would be needing under its pipe line operation? A. Yes, that is correct.

Q. Now then, as of 1936, when the California Utilities Corporation took over the Kettleman Lakeview Oil Company, you stated that the Kettleman Lakeview Oil Company had some leases, oil leases?

A. I don't know as I quite follow you. There was a period of time elapsed in there, and the original lease that the Kettleman Lakeview Oil and Gas Company had consisted only of 60 acres on which this well was located that had previously blown out.

Q. Now, that belonged to the Kettleman Lakeview Oil Company, is that right?

A. Yes, I am quite sure that is correct.

Q. I believe you stated that some large oil company stopped that blowout, is that what you call it?

A. No, that is not correct. This was what was called the original Friend Anderson Well No. 1, located on the 60 acres of land, the lease of which was held by the Kettleman Lakeview Oil and Gas Company. Now, it blew out and that was the only well on that 60 acres then there. After we had drilled out the first well and drilled one new well, then we moved over to the Irma No. 1, or the Watson No. 1, whichever [80] you want to call it, and that was about a half or three quarters of a mile from this first Friend Anderson well on an entirely different piece of property.

Q. But the Kettleman Lakeview had a lease on that Friend Anderson well and it had a lease on

(Testimony of Ralph W. Moore.)

the—what was the name of the other well that you mentioned?

A. Well, it had several names. We called it Vaco 712.

Q. Now, that well, was that well stopped up at that time, just plugged up in 1936?

A. Yes. Whenever these operations started either in the latter part of 1935 or the first of 1936, that well was cemented in. It had a cement plug down inside of it.

Q. Had a cement plug down inside of it?

A. Yes.

Q. But the Kettleman Lakeview had a lease on that well?

A. Well, they had taken a lease on—they had given up the lease on the 60 acres and then taken a new lease on 750 odd, which included the 60 plus the land where this Vaco 712 was located.

Q. Now I presume that prior to the blow-up of the Friend Anderson well, that the Kettleman Lakeview had been supplying from that well, gas to the Gas Fuel Company, is that right?

A. That is correct, yes, sir. [81]

Q. Did they get sufficient gas from that well?

A. Oh, yes. That well was capable of producing at least, I believe the Standard Oil's field man and the Sunset oil man said from their records it was capable of producing economically some 8,000,000 feet of gas per day.

(Testimony of Ralph W. Moore.)

Q. Now then, the other well, the Vaco well, No. 7.

A. Yes.

Q. Had that been furnishing gas likewise to the Gas Fuel Service Company prior to that time?

A. Oh, no. Originally it sold its gas to the Pacific Gas and Electric Company.

Q. Well, didn't the Pacific Gas and Electric Company discontinue buying any gas?

A. They discontinued in the whole area. They had laid their own lines from one of their main supply lines, they had laid these primary lines over to all of these wells, Vaco 712 and another old one, and the line to the two Irma wells, which was about a mile and a half away from this, they had collecting lines of their own. They cancelled the contracts. They had just month to month contracts like all the rest of them, and they cancelled those and removed their pipe, but their pipe had been there better than two years, and they had bought gas from all those wells.

Q. From all those wells? A. Yes. [82]

Q. And they took up those pipes and used them some place else as pipes?

A. I assume they did.

Q. They took them up though?

A. Yes, they took them up anyway.

Q. I believe you stated that at that time, in 1936, you had an ample demand from customers to justify, in your opinion, the prospect that the Gas Fuel Company could be operated profitably?

(Testimony of Ralph W. Moore.)

A. Yes, indeed.

Q. Now, I believe that some time after 1936, either the latter part of 1936 or some time around the first part of 1937—you will correct me, of course, if I am not right.

A. If I can remember.

Q. —That the Kettleman Lakeview Oil Company secured two leases on some wells, a couple of wells. What wells were those?

A. Well, the Kettleman Lakeview Oil and Gas Company had a purchase option on the Irma No. 1 and Irma No. 2, which was the one named—in the Mining Bureau there, listed as Watson No. 1 and Watson No. 2; they are the same wells.

Q. They are the same wells?

A. Yes. They had a purchase agreement to buy both wells.

Q. Did the Kettleman Lakeview Oil Company operate those [83] two wells?

A. Yes. No, not the two, only the one.

Q. That is the Irma—— A. No. 1.

Q. Irma No. 1? A. That is right.

Q. And they got gas from Irma No. 1 after the California Utilities Corporation took over?

A. They did, yes.

Q. I believe you stated, Mr. Moore that in your investigation of the prospects of this business, to determine what they had, and so forth, that you found there was some wells there either under lease or otherwise that had been plugged up or cemented

(Testimony of Ralph W. Moore.)

up, and you, of course, presumed that those wells, when this cement had been bored through, would reproduce the gas? A. Yes, that is correct.

Q. I believe you stated that later on when you drilled one or more of those wells, you found out that you either didn't get gas or else it was mixed with water?

A. Well, we got immense quantities of gas and we also got immense quantities of salt water, both at the same time.

Q. But you were not able to use the gas by reason of the water?

A. Oh, no, no, that is right. [84]

Q. Mr. Moore, did I understand that the companies, Central California Utilities and the two subsidiaries or either one of them, drilled this Irma No. 1 well, or did they just have it under some kind of a lease?

A. No, we drilled the one called the Friend No. 2, after we bored the cement out, took the cement plug out of the Vaco 712, we moved down from Friend No. 1 about a mile and a quarter and drilled an entirely new well, which we called Friend No. 2, and that also came in with water and gas.

Q. Did you drill any other wells after that?

A. No, that was the only one.

Q. That was the last. At what time would you place that, in what year would you place that?

A. Well that was the first job we did there, the second job we did with that \$20,000.00. I would say

(Testimony of Ralph W. Moore.)

that would be along in February or March of 1936, or approximately that time.

Q. Now, I believe you stated that up until the time you discontinued the operations under a temporary permit to do so, which would be some time the latter part of 1937, that you were not able to find any gas supply other than the supply that was—other than the supply that you were able to get on a temporary basis from the California—what is that company's name, Southern California?

A. Southern California Gas Company. [85]

Q. Is that correct? That is the only supply you had then available in 1937, in the latter part of 1937?

A. That was the only one that we had definitely available, yes.

Q. *Did have* in 1937, any other gas supply, other than the one you got from the Southern California Gas Company, that is the agreement you entered into with them for them to supply you with gas?

A. No, we had no other source of supply.

Q. No other source of supply. Now, Mr. Moore, did they have some kind of a flood up there in Kings County, the Tulare Lake region in 1937 or 1938? When was that?

A. It was my impression it was in 1937, but I would have to refresh my memory.

Q. It was either in 1937 or 1938?

A. Yes, that is correct.

(Testimony of Ralph W. Moore.)

Q. But the exhibits in this record would show that, probably. A. Yes, the record will show.

Q. Prior to the flood and while you were receiving service from the Southern California Gas Company, did it develop that your pipe line had sprung leaks to such an extent that it was not mechanically feasible to continue to purchase gas from the Southern California Gas Company?

A. It did. I believe that our records of the company [86] will show that we received approximately 24—we delivered approximately 24 per cent of the gas that went into the line at the meter of the Southern California Gas Company.

Q. And that condition developed for the first time during 1937?

A. Well, I wouldn't say for the first time, no. There were leaks in that line in various places.

Q. It became a major problem in 1937?

A. Yes, it became a major problem at that time.

Q. Then the flood comes along. What effect, if any did that flood have on the pipe line system?

A. Well, the pipe in many instances was laid on the top of the ground, in other instances it was laid right around the edge of what we call the Tulare Lake Basin, which is a tremendous big basin. These pipe lines were laid practically upon the slope of the bank that made the basin, either on a dyke that went across or on the natural bed of it, and as these waters came up there, naturally it washed it away by water, and in many cases it entirely exposed the line.

(Testimony of Ralph W. Moore.)

Q. Well, I believe you stated on direct examination that you recommended to the company that they sell all that pipe line?

A. Yes, I couldn't tell you the exact date, but that was my recommendation at the time. It was just prior to when it was sold. [87]

Q. Well, do you recall when it was sold?

A. My impression was that it was either late in 1940, or early in 1941, about in there. I don't know.

Q. In other words, are you definite about that now, Mr. Moore?

A. No, I cannot be definite. There are so many dates involved here, frankly, Mr. Attorney, I just can't keep them all straight in my head. I think the records would show that, if I might be permitted to——

Mr. Maiden: This is very important, your Honor, so I would like to take the time.

The Court: All right, take whatever you need.

By Mr. Maiden:

Q. Attached to the stipulation, Mr. Moore, which the parties have entered into is a general ledger sheet from the books and accounts of the Capital Service, Inc., and it shows that on April 30, 1940, an entry was made showing sale of pipe and crediting the account of the Central California Utilities Corporation with \$832.19. Now, is that your understanding of what the sale of that pipe line brought?

A. No, that is—may I look at this?

Q. Yes. A. That was in 1940.

(Testimony of Ralph W. Moore.)

Q. Well, the entry is made April 30, 1940, and there is a little notation there that is sale of pipe, and then it [88] credits the account of the Central California Utilities Corporation with \$832.19. Now, was that the entire amount for which you sold that pipe?

A. No.

Q. Do you recall how much the pipe brought?

A. Well, it was either \$2,000.00 or \$2,500.00, one or the other, it was a round sum.

Q. Do you know what became of the balance of the sum you received from the pipe?

A. Well, perhaps I misled you. The purchase price was not the same as we received, because the company owed a lot of local taxes, and the deal was that we would sell the pipe for either \$2,000.00 or \$2,500.00, and Mr. Friend was to pay all of the taxes and send us a receipted tax bill, plus his check, and that is the end of it, and I think you will probably find, in some of the other books, where the checks were recorded.

Q. In other words then, this credit of \$832.19 is the amount left from the sale of the pipe after you had paid off certain obligations of the Gas Fuel Service Company?

A. That is correct. I understand that is the net amount of cash received.

Q. Now, as to the date when you sold the pipe, we don't know at this time, but I will pass it for the moment; we know the date on which it was entered on the books of the [89] Capital Service

(Testimony of Ralph W. Moore.)

Corporation and credited to the account of the Central California Utilities Company. Now, after the Capital Service Company had sold all of its pipe lines, and I presume it sold its meters too?

A. Well just a minute, the Capital Service Company——

Q. I mean the Gas Fuel Company, at the time it sold the pipe line, it likewise sold the meters, too?

A. My recollection is this was a different transaction. We had a foreman up there that had not been paid for several months and had a labor claim against the company, and we gave him, I believe, the truck and the meters.

Q. Gave him the truck and the meters?

A. That is my recollection of it, in settlement of his claim.

Q. About when did that occur?

A. I would say it would be possibly two or three months after we sold the pipe or just about along in there.

Q. Now, it is a fact, then, Mr. Moore that subsequent to the sale of the pipe and the giving to this unpaid workman of the truck and the meters, the Gas Fuel Service Company had no other physical property, is that correct?

A. Are you speaking of subsequent or prior to those events?

Q. I mean subsequent to them?

A. No, it had not. [90]

Q. Now, I will ask you if it is not a fact that

(Testimony of Ralph W. Moore.)

at least by December 1, 1939, the Kettleman Lakeview Oil Company, the other subsidiary had no property whatsoever? A. Yes, that is correct.

Q. Now then, I believe you stated, Mr. Moore, on direct examination that the prospects of the Gas Fuel Service Company were greater in 1939 than in 1936, and also Kettleman Lakeview Oil Company, is that correct?

A. Well, I believe I said it was in my opinion, it was worth more then than it was in 1936, yes.

Q. In other words, it was your opinion that the value of the investment that Capital Service Inc., had in these corporations that we are talking about was greater than the value in 1936, at the time Capital Service made the investment?

A. Well, if I said that, that was not what I intended to say, and I don't believe I said it. I said we were considering the value of the proposition. The value of the proposition and the amount of the money that Capital Service had put into it, in my opinion, were two entirely separate and distinct entities.

Q. Well, do you have any idea what the nature of this law suit is about, Mr. Moore?

A. Very little.

Q. You don't know what the issue is? [91]

A. Well, all that I know of my own accord, is that there is some question about when the certificate, when the value of the certificate——

(Testimony of Ralph W. Moore.)

Mr. Walker: If the Court please, I fail to see the materiality of a question such as counsel has raised.

The Court: Let us test the witness about his knowledge. He has testified quite at length on direct examination.

Mr. Maiden: About conditions being better in 1939 than in 1936. We only want to find out what he means.

The Witness: Yes, if you will permit me to.

By Mr. Maiden:

Q. Yes.

A. If I haven't gotten that straight, I want to get it in. I said in my opinion, I thought the value of the entire project was as great if not greater, in 1939, than it was back in 1936.

Q. Well now, what was the entire project in 1936?

A. Well, the entire project in 1936 was related only to its selling gas to some, about five or six customers. By 1939, it had developed that there were a lot of other oil interests in that were drilling wells all around that were looking for markets for their gas, and my thought on that point right there was that at the time still in 1939, I thought we had greater prospects of interesting some substantial capital [92] than we had away back in 1936.

Q. In other words——

A. Because the demand for gas was continually increasing. A lot of these smaller municipalities

(Testimony of Ralph W. Moore.)

had organized their own, I believe they call it utility districts, I believe that was true with the town of Visalia and Tulare, and I had, even up to that time, I had conducted some negotiations with those people, looking to their financing a line from some of those gas supplies, up to where they wanted to use it, just exactly the same as I spoke this morning about the Fullerton Oil Company, our proposition when they approached us, was that they not only furnish us gas, but they also put up the money to build a line to deliver it with.

Q. Now then, these negotiations that you had with the Fullerton Oil Company and the Fuel Oil Company and any other negotiations that you had, did those negotiations occur in 1939?

A. You have me mixed there in that, because there was so many of them, frankly, Mr. Attorney, that it is difficult for me to tie them all in together. There were a lot of things happening there.

Q. Well, you know I am just trying to pin these factual points down as clearly as I can because this is necessary for the Court to be able to render justice between the parties in this case, that we get the facts as clearly as we can. [93]

A. I don't believe I could truthfully answer you that, Mr. Attorney, as to the exact date of it, whether it was 1939 or 1938.

Q. But you would say that those negotiations took place by December 31, 1939?

A. Well, would it be permissible to look at the

(Testimony of Ralph W. Moore.)

date of that letter that I wrote around July? I think that will clarify it.

Q. Yes, sir. You have that here. That is Petitioner's Exhibit No. 25. This is dated August 21, 1941.

A. Well, it was prior to that time. It would be my impression that the negotiations with the Fullerton Oil Company were in the latter part of 1940. That is to the best of my knowledge and belief.

Q. Did you have any negotiations with them prior to 1940? Do you believe they were prior to 1940?

A. I believe they were prior to 1940.

Q. Now, what other concerns, such as the smaller concerns, did you have negotiations with prior to 1940?

A. Well, I think I covered all that we had. There was the Superior Oil and Fullerton Oil. I discussed it with Lincoln Petroleum and then later the Anderson, another one the Ben Dudley, and Mr. Dudley's property, that is about all, and Nelson and Mrs. Irvine.

Q. And all of those negotiations broke down?

A. Yes, sir, they all did.

Q. They all broke down, and they all broke down at least by December 31, 1940. We can put it that way, trying to get that clear, is that correct?

A. I would say that is correct, yes.

Q. Now, Mr. Moore, I understand that the type of proposition you were putting up to these oil

(Testimony of Ralph W. Moore.)

people was, furnish us gas and lend us the money to put in the pipe line. Is that correct?

A. That is absolutely correct, yes, sir.

Q. Now, as a matter of fact, after you sold your pipe line if you had bought the gas, unless you had money enough to put in the gas lines, you could not have rendered any service under your certificate, or you could not have transacted any business at all, is that correct?

A. Let me see if I understand correctly. If we had gas and didn't have money to build the line, then it would be of no value, is that the substance of it?

Q. Yes, that is right.

A. My answer would be yes.

Q. And the California Utilities Corporation did not have the money, is that right?

A. No, they didn't have it.

Q. Did you approach the Capital Service, Inc., to see if they would put up more money? [95]

A. Well, I don't know as you understand my position in the matter. I was the president of these three companies you are talking about, and I had nothing to do with Capital Service in any way, shape nor manner.

Q. Except the Capital Service Company was the biggest stockholder that those corporations had, is that right?

A. That is correct, sir.

Q. And I presume that in view of that relation you must have had an acquaintance with at least some of the officers in Capital Service, Inc.?

(Testimony of Ralph W. Moore.)

A. Oh, yes, surely, I knew all the officers.

Q. But you never personally asked the Capital Service Inc. prior to 1940 to put up any more money?

A. I never asked Capital Service at any time to put up any money over the original deal.

Mr. Walker: At the time these negotiations started, I don't believe the Capital Service Company was in existence in 1935, was it? I think the record will show that it was organized in 1936.

The Witness: About 1936. Our original negotiations were about 1935.

By Mr. Maiden:

Q. I was talking about the years 1937 to 1940.

A. I was more or less familiar with some of the affairs of the Capital Service. For instance, their president had [96] talked to me about improving service, and I knew something about the money they had put into this Gas Service, but as far as having any official connection with Capital Service, I had none whatever.

Q. You mean you had none with Capital?

A. That is right.

Q. And you went to various concerns for capital?
A. That is correct.

Q. And you couldn't get that?

A. That is correct.

Q. Neither capital nor gas supply?

A. That is correct.

Q. And you did that prior to December 31, 1940?

(Testimony of Ralph W. Moore.)

A. Yes.

Q. When would you say that you first began trying to get more capital, back as early as 1937?

A. No, I don't think so, because the negotiations that were had with Mrs. Irvine, they were practically right in our own territory and we didn't need to have money over a thousand dollars or so, to hitch on the wells.

Q. I believe you testified on direct examination, those wells were all water wells, too?

A. That is right.

Q. So you couldn't get any gas from them at all? A. That is right. [97]

Q. Now, Mr. Moore, G. Brashears & Company, is that a pretty big operating company in Southern California, if you know?

A. Well, I would have no knowledge of my own, of any affairs of G. Brashears & Company.

Q. I thought I understood you to say that through your connections with that company you were able to arrange for the taking over of the Inland Company's properties, and buying these two subsidiaries?

A. Yes, that is correct. That would be only \$20,000.00 involved. That would not take a very big financial organization to supply \$20,000.00.

Q. I understood then, that the \$20,000.00 was put in by Capital Service, Inc., or by G. Brashears & Company. A. G. Brashears & Company first.

Q. If that had been—or had proven satisfactory,

(Testimony of Ralph W. Moore.)

G. Brashears & Company were to sell the shares to the public, but they did not offer those?

A. No, because the \$20,000.00 didn't warrant it.

Q. In other words, they were not willing to undertake to sell these shares to the public after the \$20,000.00 expenditure had turned out to be a loss, is that correct?

A. Well, you know that would be expressing Mr. Brashears' opinion and I wouldn't want to do that.

Q. All you know is that they did not attempt to sell [98] any of those shares to the public?

A. That is correct.

Q. Is it your opinion that the stock had any value—by the way, you were a stockholder in the Central Corporation I believe you said?

A. Yes.

Q. Has it been your purpose here as a witness on this stand to tell the Court that that stock had value up until 1942?

A. That is rather an embarrassing question. I believe now that I have testified to the effect that the entire proposition had as much value in 1939 as it had in 1936. Now with reference to the stock, I don't know whether I ever considered it from the stock angle, because there wasn't any stock outstanding except what we exchanged for the Inland. I was speaking of the proposition as a proposition.

Q. Now, how can you reconcile your statement with the facts which you have shown in this matter, and state that the proposition was just as good or

(Testimony of Ralph W. Moore.)

better in 1939, than it was in 1936, considering all of these conditions which you have testified to after 1936, including the sale of this pipe line and that if it had gas service available it had no pipe, when it had this well which was producing an adequate supply of gas and there was an ample demand for gas and less competition in 1936—— [99]

Mr. Walker: If the Court please, counsel is trying to summarize all of the witness' answers to date. If he wants to ask a question relating to one thing, I have no objection to him repeating what the witness said on direct, but I object to him including everything that the witness has testified to.

Mr. Maiden: If the Court please, this is cross-examination.

The Court: This is cross-examination.

Mr. Maiden: And I think there is no doubt about what I am leading up to.

By Mr. Maiden:

Q. It is admitted through your testimony in this case that Gas Fuel Service Company, after you took it over and commenced to distribute gas to customers and did continue to distribute gas to customers up until you lost your only supply some time in 1937, when the Southern California Gas Company cut you off because of failure to pay your gas bill. Now, then, compare those conditions with the circumstances that existed in 1939. Even if you did have any pipe in 1939, as of the end of 1939, it was full of holes and leaks, and you couldn't economi-

(Testimony of Ralph W. Moore.)

cally operate the line, and considering also the fact that the Kettleman Lakeview Oil Company had absolutely no more leases on property at all as of December 31, 1939, how can you reconcile your statement that conditions were better [100] in 1939 than in 1936?

A. Well, you are putting something there that—that I didn't say. I didn't say the conditions were better. I said I considered the value of the certificate and the proposition as valuable in 1939 as it was in 1936. Now, speaking of this, and again there is a factor in that sort of situation, everybody knew it, it was a gambling speculation in 1936, and it was still a gambling speculation in 1939, and if we could have cleared up, of course Brashears and Brashears & Company and Capital Service, we owned 250,000 shares of promotional stock, and when we went to these other people then, the only major difficulty we had was very frankly, we were not willing to give up enough of our stock to particularly interest them in coming into it.

Now, by 1939, we had become pretty certain that our glasses perhaps were a little bit rosy, or that circumstances had proven that the deal was not as good as we thought it was going to be, but in 1939 even, there still was a market, there were plenty of people in the territory, and I felt that as far as the value of our equity in it, we still could have interested the people.

Q. That was in 1937?

A. Yes.

(Testimony of Ralph W. Moore.)

Q. Do you mean to tell the Court that in 1936, before entering into that enterprise, that the company had all that [101] pipe line, nearly 31 miles and that it had no leaks in it?

A. Oh, no, no. I never made any such statement as that.

Q. But you felt in 1936, that the pipe line was perfect, is that correct?

A. No, that is not correct at all. I never said any such thing. You can walk right along coming over from the Friend Anderson Well over there for about four and a half miles, lying right on top of the ground and you could walk right along and smell the gas coming right out of that, and we patched it there time and time again.

Q. Now, Mr. Moore, you were a stockholder in California Utilities. Was it your opinion that your stock had any actual value after 1940? [102]

A. Yes, I thought it had value.

Q. Did you think it had substantial value?

A. Yes, I thought it had substantial value.

Q. After 1940?

A. After 1940, that is right.

Q. Did you think it had substantial value in 1941? A. Yes.

Q. Did you think it had substantial value on January 1, 1942?

A. I thought it had substantial value to somewhere along in March or April, I believe I testified before, in 1942, when I found out. I had then

(Testimony of Ralph W. Moore.)

made a trip up through the valley. I talked with different people up through there, and I found out that the question of gas supply had very materially changed. There wasn't any gas then.

Q. But you now, as I understand, according to your testimony, you first became aware of the fact that there would be no gas supply for Gas Fuel Service Company in 1942, or did you become convinced of that prior to 1942?

A. No, it was in March or April that I started to check the general situation, and I found, in my opinion, at that time, that it was impossible to get gas.

Q. Well now, what conditions existed in 1942 as opposed to March of 1942, that made you believe that you had possibilities of gas supply in 1941, whereas you didn't have in March of [103] 1942?

A. Well by March of 1942, I convinced myself, or thought that I did—that none of the larger companies were going to be willing to deal with us at all.

Q. Well hadn't all of the larger companies turned you down by the end of 1940?

A. Well, they had turned it down on the basis that we put the proposition up to them, yes.

Q. Well, what made you suspect that they would later become interested in your proposition?

A. Well, I felt that if it was still continued to be impossible for them to sell their gas, that they would still be interested in talking with us.

Q. Well now, suppose you could have got someone to furnish you gas——

A. All right.

(Testimony of Ralph W. Moore.)

Q. —will you please tell the Court where you expected, by the end of 1940 to get the money sufficient to put down pipes and equipment necessary to render the service and go in business?

A. That is at the end of 1940?

Q. At the end of 1940.

A. Well, I am a bit puzzled on that one, because I can't recall the dates of all these negotiations that I had. Frankly I can't specify any particular one at that time because [104] those dates are not all fresh in my mind.

Q. Now, Mr. Moore, I will ask you if you can identify your signature on this letter. Is that your signature?

A. Yes, that is my signature.

Q. Now, I will ask you if this letter, which you just identified, of December 2, 1940, wasn't in reply to a letter to you dated November 22, 1940, by the Internal Revenue Agent in charge at Los Angeles, California?

A. Yes, I recall that letter.

Q. And in answer to this letter of November 22, 1940, from the Internal Revenue Agent?

A. Yes.

Mr. Maiden: I would like to offer a letter dated November 22, 1940, from the Internal Revenue Agent in charge, addressed to Mr. R. W. Moore, the witness now on the stand, as Respondent's Exhibit I.

The Court: And Respondent's reply thereto?

(Testimony of Ralph W. Moore.)

Mr. Maiden: I want to offer in evidence likewise the reply of Mr. Moore, the witness now on the stand, to the letter from the Internal Revenue Agent, dated December 2, 1940, as Respondent's Exhibit J.

Mr. Walker: I have no objection to the letters, your Honor. I would like to ask the witness questions about it, either now or later when Respondent's counsel has finished cross-examining. [105]

Mr. Maiden: Yes.

The Court: Very well. The letter from the Revenue Agent and the witness' reply thereto will be received in evidence as Respondent's Exhibits I and J.

(The documents above referred to were received in evidence and marked Respondent's Exhibits I and J.)

RESPONDENT'S EXHIBIT I

November 22, 1940.

Refer to: IT:F:Se

LPE

Mr. R. W. Moore,
503 Security Building,
510 South Spring Street,
Los Angeles, California.

Sir:

Reference is made to the corporation return for the year 1939, filed by the Central California Utili-

(Testimony of Ralph W. Moore.)

ties Corporation; information available indicates that you are president of this corporation.

Certain stockholders have claimed that the stock of this company became worthless in 1939. It is requested that you furnish information covering any event which in your opinion rendered the stock worthless. It is noted that the balance sheet of December 31, 1939 shows stock in subsidiaries, \$1,124,507.49. It is requested that the names of subsidiaries be furnished, with addresses and status in 1939, i.e., whether active or inactive corporations.

Please furnish also any information you may have as to merger in 1936 whereby stock in Inland Public Service was exchanged for stock of Central California Utilities Corporation.

Please furnish this information for the attention of IT:F:Se-LPE.

Respectfully,

/s/ GEORGE D. MARTIN,

Internal Revenue Agent in
Charge.

LPE:gb

Admitted May 5, 1948, T.C.U.S.

(Testimony of Ralph W. Moore.)

RESPONDENT'S EXHIBIT J

[Letterhead]

Timm Aircraft Corporation

December 2, 1940

Att: IT:F:Se

LPE

Internal Revenue Agent in Charge

Los Angeles Division

Internal Revenue Service

12th Floor, U. S. Post Office and Courthouse

Los Angeles, California

Dear Sir:

Answering your letter of November 22, 1940.

The stock in subsidiaries, \$1,124,507.49, reported by the Central California Utilities Corporation as at December 31, 1939 represented the book value of the Gas Fuel Service Corporation and the Kettleman-Lakeview Oil and Gas Company, both of which were wholly owned subsidiaries of the Central California Utilities Corporation.

The Central California Utilities Corporation is a holding corporation for the Gas Fuel Service Corporation and the Kettleman-Lakeview Oil and Gas Company and has no assets other than the stock of these two corporations. The Gas Fuel Service Corporation was granted a franchise for the distribution of natural gas in certain portions of Kings and Fresno Counties, California, and at one time had approximately thirty-eight miles of pipe line laid

(Testimony of Ralph W. Moore.)

in the vicinity of Tulare Lake serving several ranchers with natural gas.

The flood conditions which existed in the Tulare Lake Basin during 1938 flooded a major portion of the territory served by the Gas Fuel Service Company and resulted in discontinuance of this gas service.

During the early part of 1939 the company sold its pipe line which had by then become unfit for the transmission of gas, and today it has no assets of any nature other than the questionable value of its certificate of public necessity under which it was permitted to sell gas.

The value given on its Balance Sheet for rights and franchise has a value only as its operations are resumed, such value being commensurate with whatever profit this corporation might be able to earn from its operations, all of which now are suspended.

The Kettleman-Lakeview Oil and Gas Company was organized to serve as an operating company for the production of natural gas for sale to the Gas Fuel Service Company. At one time it held leases on a large number of acres of potential gas producing land at Dudley Ridge and vicinity in Kings County, California, and attempted to drill gas wells thereon. These wells were not productive and the leases were surrendered with a result that the Kettleman-Lakeview Oil and Gas Company has no assets of any nature.

(Testimony of Ralph W. Moore.)

The Address of the Central California Utilities Corporation, the Gas Fuel Service Company and the Kettleman-Lakeview Oil and Gas Company is room 503 Security Building, 510 South Spring Street, Los Angeles, California, and they were all three inactive corporations in 1939.

It would be my personal opinion as the principal officer of the three above corporations that their stock became practically worthless in the early part of 1939.

With reference to the merger in 1936 of the Inland Public Service Corporation with the Central California Utilities Corporation, please be advised that one share of the common capital stock of the Central California Utilities Corporation was exchanged for three shares of the stock of the Inland Public Service Corporation with respect to all such stock held by the general public, with respect to certain promotion stock held by the originators of the Inland Public Service Corporation, the method of exchange was on a definite basis under which they received a substantially lesser number of shares than were given to the general public.

I trust the above is the information desired by you and if not, I will be glad to go into further detail upon request by you.

Very truly yours,

/s/ R. W. MOORE.

Admitted May 5, 1948, T.C.U.S.

(Testimony of Ralph W. Moore.)

The Court: You will have the right to examine the witness.

Mr. Maiden: He has redirect, yes, I understand that, your Honor.

By Mr. Maiden:

Q. Now, Mr. Moore, in your letter to Mr. Ben Dudley, which is dated August 21, 1941——

The Court: Is that an exhibit?

Mr. Maiden: That is Petitioner's Exhibit No. 29. Thank you, your Honor.

The Court: All right.

By Mr. Maiden:

Q. ——was with respect to having Mr. Ben Dudley, I believe, as you testified, find a purchaser, or either purchase himself some property. Now, I just wondered what property you meant?

A. Well, as I read this, it says, "If you or your associates develop any interest in the franchise"—that [106] would appear to be quite clear. Wouldn't it be the franchise we are talking about. I mean, I used the word "franchise." It should be "certificate of convenience and necessity." It should be certificate?

A. Yes.

Q. Now, were you under the impression that you could sell the certificate of necessity that you had to some other corporation?

A. No, no. I figured we would have to sell him the stock of the company in order to do that.

Q. I see. But this availed you nothing, I believe? Did you ever hear from Mr. Dudley about it?

(Testimony of Ralph W. Moore.)

A. Nothing except once or twice he telephoned me about it and I assume I am not permitted to testify as to what he said at that time.

Q. That is right. Now, I believe you have testified that you never, at any time exercised the franchise which you had obtained from Fresno County, by operating any pipe line or operating at all?

A. You are still referring to the certificate of—

Q. This I am referring to is the County franchise.

A. Oh, the County franchise. No, we did not.

Q. You never did?

A. No, we never laid any line from Fresno.

Q. I guess it is your testimony that after you sold [107] this pipe line that the Gas Fuel Company did have in Kings County—that you never thereafter laid any pipe line?

A. That is correct.

Mr. Maiden: I believe that is all, if the Court please.

Mr. Walker: May I have just a few moments, if the Court please?

First I would like to discuss the Respondent's Exhibits I and J, which have just been introduced.

The Court: Well, discuss them, what do you mean?

Mr. Walker: Well, I would like to ask the witness further questions about them.

The Court: You want to interrogate the witness concerning them?

(Testimony of Ralph W. Moore.)

Mr. Walker: Yes.

The Court: That is all right.

Redirect Examination

By Mr. Walker:

Q. Did you understand from this inquiry you received from the Revenue Agent, Mr. Moore, what stockholders of Central California Utilities might have claimed that their stock had become worthless in 1939?

A. No, I have no knowledge of that.

Q. Did you know whether the stock of Capital Service in that project was some of the stock which was under consideration? [108]

A. No, I had no knowledge of what the individuals, the individual stockholders were that the agent referred to.

Q. Well, did you know what stockholders or how many stockholders of Central California Utilities there were, roughly speaking, in general terms?

A. Why, I would say there was possibly around a hundred, something like that.

Q. And they were the individuals, I believe, you testified on previous direct examination, that had received shares in Central California Utilities in exchange for their shares of Inland?

A. Yes.

Q. Did you have any reason to believe when you answered this letter of December 2, 1940, that the certificate of public convenience and necessity

(Testimony of Ralph W. Moore.)

under which it was permitted to sell gas wasn't in effect or was not in effect?

A. No, I felt very definitely it was in effect.

Q. I note you state in the letter that the only asset that the company had was this certificate which was of questionable value, and I ask you why you made that statement.

A. I think it was of questionable value until such time as you could prove it, just the same as an oil well is of questionable value until you bring it in.

Q. Now, you stated also that the value on the balance sheets for the rights and franchises had a value only as operations [109] were resumed. Were there thoughts in 1940 of resuming operations?

A. Oh, definitely so.

Q. Were there any of a specific nature at that time with reference to——

Mr. Maiden: Now, if your Honor please, I am going to object to this entire line of redirect examination upon the ground that I want the Court to look at these two documents, and these two documents speak absolutely and unequivocally for themselves. There is absolutely nothing ambiguous about them, and I don't think it is proper to have this witness now, in view of the statements made in that letter to try to put some other explanation upon the subject matter treated in those letters.

Mr. Walker: If the Court please, I understand exactly why counsel wants the letter in. It is cer-

(Testimony of Ralph W. Moore.)

tainly obviously material. I have no objection to it on that ground. The letter states matters that the witness has stated to an individual in the Revenue Agent's office. I think we have an interest to know why he made his statements.

The Court: Don't you think the letter speaks for itself?

Mr. Walker: Well, the letter makes statements which I would like to have explained, and in the surrounding circumstances, that is all. [110]

Mr. Maiden: Well, if your Honor please, for example, I might state that the revenue agent wrote Mr. Moore telling him that certain stockholders of the Central California Utilities Corporation were claiming under the 1939 returns that their stock became worthless in that year and wrote Mr. Moore for information as to the financial condition of the Central Utilities Company in that year, otherwise, whether in his opinion, their claim had a basis, in fact, and he replies and reviews the financial condition of the Central California Utilities Corporation, and he states that the only assets that it had in 1939 was the certificate of public necessity which was of questionable value, belonging to the Gas Fuel Service Company that had no other assets, nor did the other subsidiary have any assets. Then he makes the statement, "It would be my personal opinion, as the principal officer of the three above corporations, that their stock became practically worthless in the early part of 1939."

(Testimony of Ralph W. Moore.)

Mr. Walker: Well now, it is right there your Honor. I would like to ask him what he meant by "practically worthless." I have no quarrel with the letter itself, at all.

The Court: The objection will be overruled. I will hear the witness. Naturally, from an evidenciary standpoint, the expression of a witness in writing back at this crucial time would carry more weight, than the evidence of a witness at a hearing where he is advised specifically and knows what issues counsel seeks to elicit from him in the building up of the case.

Avoid leading questions, and you may ask him the question that you suggest.

By Mr. Walker:

Q. Can you state to the Court, Mr. Moore, what you meant when you stated that in your opinion the stock was practically worthless in the early part of 1939?

A. Yes, I would be glad to. I think perhaps I am a bit confused. I try not to be, but I considered the thing from two angles: One, the value of the franchise, the other the actual saleable value of the stock that these people had. When I said to you and the others that I considered the proposition as valuable in 1942 as it was in 1936, I had in mind that there would have to be a reorganization and that there would have to be a general revamping of the structure, but that the franchise, as a franchise, was extremely valuable. That was my honest opin-

(Testimony of Ralph W. Moore.)

ion, and when I spoke there about the stock becoming worthless, I didn't figure that the stockholders or Mr. Brashears and myself were going to be permitted to retain all the equity that we had in that company unless it was revamped and additional money was provided——

The Court: Mr. Witness, will you please confine yourself to the question propounded.

The Witness: All right. [112]

Mr. Maiden: I am going to move, your Honor, that I think that whole answer is so unresponsive that it should be stricken. Let him give another statement.

The Court: The motion will be granted and the answer stricken.

Now, the witness should confine himself to the question propounded without going outside to make explanations.

The Witness: I am sorry that I did.

By Mr. Walker:

Q. Will you merely state in your own language, then, what you meant when you said that in your opinion the stock of the Central California Utilities Company had become practically worthless in the early part of 1939?

A. I had in mind that the stock was practically worthless unless something could be done in the future with that company to put it back on its feet.

Mr. Walker: I have no further questions.

Mr. Maiden: I am willing to rest on the correspondence. I have no further questions to ask.

(Testimony of Ralph W. Moore.)

Mr. Walker: I have no further questions on that one letter, your Honor. I have just one or two more questions.

The Court: Proceed.

By Mr. Walker:

Q. Could you state, once more, the status of the pipe [113] line in Kings County in 1936, when you people went into the project?

A. Well, part of the line was laid on top of the ground, part was laid around the bed of Tulare Lake, and a portion along the road that led up to Stratford.

Q. Did you feel that that pipe line was sufficient to enable the company to operate profitably?

A. Well, you mean the length of the pipe line sufficient or the size of it?

Q. The size in 1936 when you went into the project.

A. No, I thought they would have to have some additional line.

Q. For how long a period did you have honest hopes of getting gas production back into operation in Kings County?

A. Well, my impression of the date would be in '41.

Q. You continued to have hopes of getting it into operation until 1941?

A. Yes, in Kings County.

Q. You have stated in connection with this letter

(Testimony of Ralph W. Moore.)

you wrote to the revenue agent that the stock was practically worthless. Can you state what you thought its value was in 1936?

A. You mean at the start?

Q. That is right.

Mr. Maiden: Your Honor, I object to that. I don't [114] think that is competent. We are dealing here with the determination. They are claiming that it was worthless in 1942. If it was worthless in any prior years, then they haven't got any prior case.

Mr. Walker: I am trying to point out the feeling behind the word "practically."

The Court: Has this witness qualified as an expert on valuations of stock? He has attempted to give the physical properties back of the stock, and isn't a determination as to what that stock is worth a matter for the Court?

Mr. Maiden: It is, your Honor, in my view, solely within the province of the Court.

The Court: The witness is, as I recall, not qualified on the stock.

Mr. Walker: Then I would object to that letter he wrote, wherein he expressed that opinion, that in his opinion it was practically worthless, and have the letter that he wrote to the revenue agent competent to state the facts only that he otherwise stated in that letter. In other words, if the Court please, the witness is obviously familiar with this project there. He has been president of the com-

(Testimony of Ralph W. Moore.)

pany since the Inland Company was reorganized in 1936, and he is being asked by an Internal Revenue Agent what his opinion was, and he stated that opinion in this letter that is now in evidence.

The Court: He stated in the letter that it was practically [115] worthless. You interrogated this witness as to what he meant by the expression, "practically worthless." Of course, that is not a definite term and is subject to some explanation. Now, you would have the right, within the rules of evidence to have this witness' interpretation of what he means by "practically worthless," but I don't understand that that qualifies him as an expert witness in stock valuation.

Mr. Walker: No, no, we are not purporting to put him up as an expert on that particular thing.

The Court: You have had the privilege of interrogating this witness on the matter you are complaining about in this letter.

Mr. Maiden: If the Court please, I think what Mr. Walker had in mind was that the letter in effect, expresses an opinion of this witness, based upon his knowledge of the assets held by the corporation as of that time.

The Court: Yes.

Mr. Maiden: I think that is—of course, it is quite obvious that this letter could serve Respondent more than one purpose. I don't like to say out publicly for what purpose; it is not necessary, but it could serve more than just one purpose. Now,

(Testimony of Ralph W. Moore.)

of course, this letter was written Mr. Moore by the Bureau of Internal Revenue posing a very vital question, and asking him to furnish them reliable evidence upon which to treat claims of worthlessness of this stock in 1939. [116] Of course, Mr. Moore knew that when he wrote that letter, and I think upon the basis of the physical condition of the company, that he states there, and then gives his opinion, I think that is something quite apart from trying to qualify a man and qualifying a man as an expert. I think your Honor is absolutely correct on that. I think that the letter is competent, as I say, in more ways than one.

Mr. Walker: Well, if the Court please, we are not trying any case but this particular one right now. We are interested, as I said, to elicit the facts concerning this project and what this witness knows about it. That is my only purpose.

The Court: Well, counsel for the petitioner had the opportunity of interrogating this witness as to what he meant by the expression, "practically worthless." You still have that right, if you have not pursued it to the full extent you desire to, but as I see it, to now ask this witness on redirect examination strictly a question that requires expert knowledge without the witness qualifying along that line would be incompetent.

By Mr. Walker:

Q. Mr. Moore, could you further explain your term, "practically worthless," by reference or by

(Testimony of Ralph W. Moore.)

using it in connection with your opinion of value at any other time?

Mr. Maiden: Now, if the Court please, I think it is [117] objectionable to ask this witness anything other than what he meant by the use of the words, "practically worthless," in that letter.

Mr. Walker: That is what I am trying to do.

The Court: Direct your question along that line. It is competent and proper for you to elicit that from the witness, as to what he meant by the expression, "practically worthless."

By Mr. Walker:

Q. Well, Mr. Moore, you have used this term, "practically worthless." Is it true that——

The Court: Ask him what did he mean by that.

Mr. Walker: Well, I have asked him that once, and he hasn't seem to rise to the bait.

The Court: Then you shouldn't suggest answers to the questions or ask leading questions. I beg your pardon for interrupting, but I knew that was coming. I could see from the attitude of counsel for the Respondent. He was just ready to raise the objection. He could explain the matter.

By Mr. Walker:

Q. Would you state to the Court once more, what you mean by, "practically worthless"?

A. My use of that word was based upon the asset values shown in the balance sheet and on the books. The stock as a stock certificate was practically worthless at that time, because [118] I didn't think

(Testimony of Ralph W. Moore.)

anybody would buy it with that balance sheet in front of them, and that is what I tried to get across, that I had two different opinions. One was the value of the stock is one thing, the value of the franchise as the equity or the intangible asset that was there was what I tried——

Mr. Maiden: Now, your Honor, that last part of his answer is not responsive and I ask that it be stricken.

The Court: Wouldn't that add to the value of the stock?

The Witness: I am a bit confused.

The Court: You have made a segregation there of values.

Read the question again, Mr. Reporter. Let's try and get this straightened out.

(The question was read.)

Mr. Walker: I think I can point out where I think this divergence comes.

Where you deviated, Mr. Moore, was where you stated what would be the value of the stock—would be what a person would see on the balance sheet and where you split off to what you thought this franchise was worth. So I will merely ask you, when you said, "practically worthless," you meant by that what a man could see in a balance sheet of tangible assets? [119]

The Witness: Assets and liabilities of the corporations, yes.

(Testimony of Ralph W. Moore.)

Mr. Walker: That is all. No further questions.

The Court: Anything further?

Recross-Examination

By Mr. Maiden:

Q. You, of course, Mr. Moore, had no intention of misleading the Government in your letter in answer to their inquiry?

A. Oh, absolutely none. I never have.

Q. You meant to tell the Government in that letter that in your opinion, a claim that the stock was worthless in 1939 and could be charged off as a loss was well based in fact?

A. I perhaps didn't understand the letter clearly. I didn't consider the question of charging it off was—was that in the letter?

Q. Yes, that is in the letter, to tell that the stockholders are claiming that certain of these taxpayers—the stockholders were claiming that it was worthless in 1939.

A. And that they proposed to charge it off in 1939?

The Court: Look at the letter, Mr. Witness, and satisfy yourself about that.

The Witness: Well, I fail to see anything in the letter that says anything about charging it off.
By Mr. Maiden:

Q. Well, it simply says that certain stockholders have claimed that the stock of this company became worthless in 1939. It is requested that you furnish

(Testimony of Ralph W. Moore.)

information covering any event which, in your opinion, rendered the stock worthless.

A. Yes. Well, perhaps that was what they had in mind, but I didn't——

Q. It wasn't your intention in answer to this letter to mislead the Government? I mean, you really meant when you put in this letter that the stock was actually worthless?

Mr. Walker: I object to that.

Mr. Maiden: I mean practically worthless?

The Court: The objection?

Mr. Walker: I object to him trying to rephrase what the witness said. Let the letter speak for itself insofar as what he said there.

The Court: Well, counsel has changed his language from——

Mr. Maiden: "Actually," to "practically," which was a slip of the tongue.

The Court: And you mean practically?

Mr. Maiden: Yes, sir. Practically. I thought I changed it.

The Court: Read the question, Mr. Reporter, with [121] the word, "practically," in instead of, "actually."

(The question was read.)

The Court: Now, there is no objection to that question?

Mr. Walker: No objection.

The Court: Very well, you may answer.

(Testimony of Ralph W. Moore.)

The Witness: Well, my answer would be—I thought I answered once—based on the balance sheet of the corporation, considering its assets and its liabilities. I considered the stock practically worthless, yes.

By Mr. Maiden:

Q. Did you understand what the Government was asking you this information for?

A. No, frankly, I did not.

Q. You didn't understand that at that time?

A. No, I didn't understand that somebody was going to write the stock off.

Q. You didn't understand that?

A. No, I didn't understand that.

The Court: Anything further from this witness?

Mr. Maiden: Nothing further if the Court please.

The Court: Anything further?

Mr. Walker: Nothing further.

The Court: You may stand aside, Mr. Witness.

(Witness excused.) [122]

The Court: Call your next.

Mr. Maiden: Your Honor, could we have a little recess?

The Court: We will suspend for five minutes.

(Short recess taken.)

The Court: Are you ready to resume, gentlemen?

Mr. Maiden: Yes.

Mr. Walker: Yes.

The Court: Call your next.

Mr. Walker: Mr. Woodard.

Whereupon,

GEORGE C. WOODARD

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: George C. Woodard.

By Mr. Walker:

Q. Mr. Woodard, what is your present employment?

A. Vice-president and director of Ryan Aeronautical Company of San Diego.

Q. How long have you been so employed?

A. Since the first of January, 1942.

Q. What were you doing prior to that time?

A. I was treasurer and director of G. Brashears & Company. [123]

Q. Were you connected with any other corporations at that time, prior to the time you left for San Diego?

A. As a representative of G. Brashears & Company I was officer and director in several other corporations, in which they were interested.

Q. Were you ever a director or connected with Capital Service?

A. Yes, I was treasurer and a director of Capital Service from its incorporation until the date I left Brashears.

Q. Were you ever an officer or director of Central California Utilities?

(Testimony of George C. Woodard.)

A. I think I was a treasurer and director of Central California Utilities.

Q. As an officer of Capital Service, Inc., did you have occasion to be familiar with its negotiations of a business nature?

A. I was connected with every operation in which they engaged.

Q. Do you recall whether Capital Service ever loaned any money to Central California Utilities?

A. Yes, they did make them a loan.

Q. Do you recall when and how much?

Mr. Maiden: Your Honor, that is all set out in the stipulation. [124]

Mr. Walker: I am just getting before the Court the connection between this witness and the operations here.

The Court: Very well. It isn't necessary, however, to interrogate the witness on matters in the stipulation unless you want to lay a foundation for something else.

Mr. Walker: Well, I want to bring in his knowledge of the proposition. May I have the stipulation, please?

By Mr. Walker:

Q. I show you, Mr. Woodard, what has been stipulated as Joint Exhibit 8-H, being a copy from the general ledger page of the books of Capital Service, and ask you if you recognize that?

A. Yes, I do.

Q. In whose handwriting are those entries made?

(Testimony of George C. Woodard.)

A. With the exception of two notations, it is all in mine—with the exception of three items it is all in my handwriting.

Q. What are those three items?

A. The last item, “charge off to P & L,” and two notations above that: “Settlement of Shell Oil,” with a question mark after it and, “sale of pipe,” on the following entry.

Q. Except for those three entries, all the others are in your handwriting?

A. Yes, sir. That is correct.

Q. The document shows that on September 16, 1936, a [125] \$20,000.00 item was entered identified as a loan on notes. Are you familiar with that entry and what it represented? A. Yes.

Q. What?

A. Capital Service lent Central California Utilities \$20,000.00.

Q. Do you know the purpose of that loan?

A. The purpose of the loan was to enable Central California and its subsidiaries to pay off some of the obligations of its predecessor, and, roughly, as I recall it, about a third of it was for that purpose and the balance was to make improvements in their facilities.

Q. Did you know anything of the nature of the business of Central California Utilities, when this money was advanced?

A. Yes. The deal was discussed among the directors of Brashears & Company and all the directors

(Testimony of George C. Woodard.)

of Brashears and of Capital Service were acquainted with the business of Central and its subsidiaries.

Q. Did you feel that you were in possession of sufficient information regarding the Central California Utilities' project to justify you in passing upon the wisdom of that advance?

A. Yes, I did.

Q. Did you feel it was a sound move? [126]

Mr. Maiden: I object to that as being leading. I hate to make this kind of objection, your Honor, but his questions put the answers in the witness' mouth.

Mr. Walker: Well, I will rephrase the question. By Mr. Walker:

Q. Upon what basis was the loan made? The stipulation shows in the exhibit that it was a loan on a note. Can you state anything further with reference to the terms upon which the advance was made?

A. The advance was made for the purpose of putting the project in such a shape as would enable it later to be publicly financed.

Q. Did you feel that you could have obtained repayment of that note at any time? A. No.

Q. Did you have that opinion when you advanced the money?

A. No, I could—we could only have obtained repayment if we were successful in carrying it through to the end which we had in view at the start.

(Testimony of George C. Woodard.)

Q. And what was that end?

A. To further develop the properties and engage in public financing.

Q. Did you know what the physical assets of Central California Utilities were? [127]

A. In general, yes.

Q. Did you feel that they were sufficient to back up a loan of this kind?

A. No, they were very insignificant.

Q. Do you know any other terms upon which that advance was made? In other words, what was the position of Capital Service to be with reference to the creditor?

A. I don't understand the question.

Q. Well, did Capital Service own any stock in Central California Utilities?

A. Yes. They received escrow stock which represented, roughly, the relation of 250,000 to some 312 of common stock, and with the 250,000—Mr. Moore as a co-venture with Capital Service got 25 per cent of the 250,000.

Q. Was that arranged prior to the time of the loan? A. Yes, concurrently with the loan.

Q. Concurrently with the loan? A. Yes.

Q. Do you know whether the \$20,000.00 which was advanced in 1936 was spent for the purpose you stated it was obtained for?

A. Approximately so, yes.

Q. Could you state again the purposes for which it was obtained?

(Testimony of George C. Woodard.)

A. To pay off the remaining obligations of its predecessor [128] and for improvement of the existing facilities.

Q. Did you expect the operations of Central California Utilities as they existed in 1936 to be such as would make it possible for the loan to be repaid?

Mr. Maiden: If your Honor please, I object to that as leading. I am sorry.

The Court: The objection is sustained. The question is propounded in an improper way.

By Mr. Walker:

Q. Did you know the extent of the operations of the Central California Utilities when you advanced the money? A. Yes, we did.

Q. What was the extent of those operations?

The Court: That is better.

The Witness: Very minor.

By Mr. Walker:

Q. Can you elaborate on that? What do you mean by, "very minor"?

A. Well, they had only a small distributing system with some 10 to 12 consumers, and it would have been impossible for a system of that size to make enough money to even pay interest on the loan.

Q. Do you know whether the money that was expended to extend the lines and recondition the wells was effective for bringing in additional wells? [129]

Mr. Maiden: Your Honor, I am going to object to that again.

(Testimony of George C. Woodard.)

The Court: That calls for a yes or no answer. It would not justify the witness to go ahead.

Mr. Maiden: It calls for a yes or no answer.

The Court: It would not justify the witness to go beyond yes or no. The objection is overruled, you understand, so far as the question is concerned.

Mr. Walker: I will phrase a different question anyway, if the Court please.

By Mr. Walker:

Q. Do you know the results of the expenditure of the money? Just answer yes or no.

A. Yes.

Q. What results were obtained?

A. Very temporary improvement and ultimately negligible results.

Q. What do you mean by "temporary improvement"?

A. Well, they brought in a few wells that produced for a short time.

Q. What happened to those wells?

A. They eventually either became water wells, or for some other hazard, through some other hazard became inoperative, non-producing.

Q. Did Capital Service put forth any additional money [130] besides this \$20,000.00?

A. Subsequent to the expenditure of the \$20,000.00 Capital Service continued to advance money in small amounts to twelve, fourteen, fifteen thousand dollars additional.

Q. What were those additional advances for?

(Testimony of George C. Woodard.)

A. Part of it was to try and bring in and drill another well; part of it was to defray expenses of the corporation of various kinds at various times.

Q. You have stated that the physical assets of the corporation when the money was advanced were practically negligible. What happened to those assets, to your knowledge?

A. The wells became non-producing. The leases were eventually abandoned because the company couldn't continue to pay the monthly minimum royalties.

Q. What about the pipe line?

A. The pipe line, due to the flood, became in such shape that it was necessary to either repair it or remove it, and it was removed; sold and removed.

Q. Did Central California Utilities ever approach Capital Service for additional funds?

A. Yes, several times.

Q. Do you recall when that was?

A. I would say several times each year during the entire period.

Q. After 1937 were any such funds advanced?

A. If any were advanced after '37, it was very minor amounts, to my recollection.

Q. Why were no further funds advanced?

A. Capital Service didn't have the funds.

Q. Didn't have any money at all?

A. It had some money. It had other enterprises in which it had this money tied up.

Q. What other enterprises were those?

(Testimony of George C. Woodard.)

A. Timm Aircraft Company, and the other enterprise started out as Full-Ton Truck Company and ended up as a baking company.

Q. You say those other projects took money of Capital Service?

A. Yes, that is correct.

Q. Why were those other projects favored over Central California Utilities?

A. I would have to refresh my memory. As I recall it, the investment was made in all three of them. The original investment, which took most of Capital Service money was made in the same year, and there wasn't a whole lot more money advanced to any of them after 1937.

Q. What was your opinion, with reference to the next step to be taken by Central California Utilities in its project?

A. To obtain additional finances. [132]

Q. It needed more money? A. Yes.

Q. What did it expect to do with that additional amount of money?

A. Arrange for a gas supply by either drilling wells or buying gas, extending the distributing lines.

Q. Was that not the same job that it had to do in 1936? A. Exactly.

Q. Did Capital Service expect to put additional money into Central California Utilities? I mean after 1937. A. Yes, if they could get it.

Q. How long did they have those expectations?

(Testimony of George C. Woodard.)

A. They still expected it when I left at the end of 1941.

Q. Capital Service, then, at the end of 1941 expected to put its own money into this project of Central California Utilities?

A. If they could get the money, yes.

Q. If they could get it. Was there any other way in which Capital Service expected to utilize its position with Central Utilities other than putting up its own money?

A. Yes. It considered—it negotiated several times, trying to sell the project to other people.

Q. Upon what terms did it try to make such sales? [133]

A. Basically upon any terms upon which it could recover its entire advance.

Q. Do you know of any such negotiations that were made? A. Offhand, I can recall two.

Q. What were they?

A. One with Mr. Elder and other—another gentleman, and one with Mr. Dechter.

Q. Do you recall when the Elder negotiations took place? A. Oh, '37, '38.

Q. Do you recall when the Dechter negotiations took place? A. Oh, '40 or '41.

Q. I would like to show you a copy of Petitioner's Exhibit No. 28. Who was Mr. Dechter?

A. He was an attorney who had a large number of clients who were in the oil business or allied to the oil business.

(Testimony of George C. Woodard.)

Q. Now, where was he located?

A. The Subway Terminal Building.

Q. Do you know where he is now?

A. He died some two or three years ago.

Q. How long had you known him?

A. As of 1941 about eight years.

Q. Had you talked to him or had you spoken to him at all about the Central California Utilities project? [134]

A. Yes, several times.

Q. You say that in 1940 or 1941, you had a discussion with him about it?

A. Yes, we did.

Q. What was the essence of that discussion?

A. That he had a client who he thought would be interested in the venture and asked me all the details and the status of the project, so that he could present it to him.

Q. What did you do about it then?

A. I asked Mr. Moore to get all the facts together and draw up a letter and send it to Mr. Dechter.

Q. Do you know if Mr. Moore ever wrote such a letter?

A. Yes, he showed it to me.

Q. I show you Petitioner's Exhibit No. 28 and ask you if that is the letter?

A. Well, without reading it in detail, I couldn't swear it is exactly the same, but apparently that is the letter.

Q. Do you remember receiving a copy of it yourself?

(Testimony of George C. Woodard.)

A. No, I don't recall that. That was Mr. Moore's practice.

Q. Did you ever contact Mr. Dechter after March of 1941? A. Yes, I did.

Q. Did you speak to him further about the Central California Utilities Project? [135]

A. Yes, I did.

Q. What was the nature of those discussions?

A. He asked for a little more information at one time, and later he told me that his client had decided he was not interested.

Q. Mr. Woodard, do you recall any correspondence being received by the Central California Utilities Corporation from the Railroad Commission?

A. Yes, we received several communications from them.

Mr. Maiden: In order to save time, if the Court please, I will stipulate that the documents Mr. Walker has in his hands are true copies written by the Railroad-Public Utilities Commission to the Central California Utilities Corporation. I believe they are all to those.

Mr. Walker: They are all addressed that way, and there are some replies which are in there, too.

Mr. Maiden: There are some replies, and I agree that they may go in evidence.

Mr. Walker: May we have these introduced into evidence as Petitioner's successive exhibits for each letter? Is that the best way to do that?

(Testimony of George C. Woodard.)

Mr. Maiden: That is all right, or they can all go in as one exhibit.

Mr. Walker: Well, I think we have separate copies there. It would be easier to keep them as separate exhibits. [136]

Mr. Maiden: All right.

The Court: Very well. They will be received in evidence as Exhibits Nos. 30 to 37, inclusive.

(The documents above referred to were received in evidence and marked Petitioner's Exhibits Nos. 30 to 37, inclusive.)

PETITIONER'S EXHIBIT NO. 30

(Copy)

Los Angeles, Calif.,

October 11, 1937.

File: 60-2

Central California Utilities Corporation,
508 Security Bldg.

Los Angeles, Calif.

Attention: Mr. W. Martin Lathrop,
Vice-President.

Dear Sirs:

Under date of July 21st we received a letter from you stating that you had entered into an agreement with the Southern California Gas Company for a temporary supply of gas due to the difficulties you were having with your wells.

(Testimony of George C. Woodard.)

At the time this matter was discussed with Mr. Crenshaw, you were requested to submit a complete report as to the outage and as to when you expected to have the wells back on the line again.

In view of the fact that we are now entering into the winter season, and it may be necessary to curtail gas supplies for firm gas users, we would be pleased to have you submit a detailed report advising us as to the status of the supply of gas in your territory.

Trusting we may have this at your convenience, we are,

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By,

Representative for Southern
California.

Admitted: May 5, 1948 T.C.U.S.

(Testimony of George C. Woodard.)

PETITIONER'S EXHIBIT NO. 31

(Copy)

Los Angeles, Calif.,

November 1, 1937.

File: 60-2

Central California Utilities Corporation,

508 Security Bldg.,

Los Angeles, Calif.

Attention: Mr. W. Martin Lathrop,
Vice-President.

Dear Sirs:

Under date of October 11th we wrote you requesting that you submit a complete report of the outage which occurred in your system some time ago due to your wells caving in.

Since the contract with the Southern California Gas Company under which you are now operating is only temporary, we would request that this report be submitted to us immediately, advising us when the wells will be in operation and gas service be resumed, thereby cancelling the present contract.

Trusting this matter will be given your prompt attention, we are,

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By

Representative for Southern
California.

Admitted May 5, 1948, T.C.U.S.

(Testimony of George C. Woodard.)

PETITIONER'S EXHIBIT No. 32

October 15, 1941

Application No. 21581

Central California Utilities Corporation

508 Security Building,

Los Angeles, California

Attention: Mr. R. W. Moore, President

Gentlemen:

Under date of March 25th you wrote us in reply to our letter of March 18th as to the possible resumption of gas service by the Gas Fuel Service Company in the vicinity of Hanford and Stratford, California.

In your letter you stated that at that time you were negotiating with certain interests looking forward to the possible resumption of service by the Gas Fuel Service Company. You further stated that these negotiations were progressing as rapidly as possible and that you expected within a short time to be able to submit some definite information relative to the resumption of gas service by this company.

Since we have not heard from you to date, we would be pleased to have you advise us of the present status of this matter.

(Testimony of George C. Woodard.)

Trusting this will be given your prompt attention,
we are,

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By WILLIAM H. GORMAN,
Director, Southern District.

Admitted May 5, 1948, T.C.U.S.

PETITIONER'S EXHIBIT No. 33

(Copy)

Los Angeles,
December 2, 1941
Application No. 21581

Central California Utilities Corporation
508 Security Building
Los Angeles, California

Attention: Mr. R. W. Moore, President

Gentlemen:

Under date of October 15th we wrote you requesting that you advise us as to the status of the Gas Fuel Service Company in the vicinity of Hanford and Stratford, California, relative to the possibility of resumption of gas service in that area.

Up to the present time we have not received a reply and would be pleased to have you advise us as

(Testimony of George C. Woodard.)

soon as possible as to your future plans regarding this Company.

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By WILLIAM H. GORMAN,

Director, Southern District.

CEC:HCB

Admitted May 5, 1948, T.C.U.S.

PETITIONER'S EXHIBIT No. 34

(Copy)

Los Angeles,

February 3, 1942.

Application No. 21581

Central California Utilities Corporation

508 Security Building

Los Angeles, California

Attention: Mr. R. W. Moore, President

Dear Sirs:

Under dates of October 15th and December 2d, 1941, respectively, we wrote you requesting that you advise us as to the status of the Gas Fuel Service Company, which formerly operated the gas distribution system in the vicinity of Hanford and Stratford, California, with reference to the possibility of the resumption of gas service in that area.

(Testimony of George C. Woodard.)

On March 25, 1941, you advised us that there might be a possibility of the Gas Fuel Service Company resuming service and as soon as negotiations had been completed you would notify us further regarding the matter. Up to the present time we have heard nothing further from you and would be pleased to have you advise us as soon as possible as to your future plans regarding this company.

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By WILLIAM H. GORMAN,

Director, Southern District.

CEC:HCB

Admitted May 5, 1948, T.C.U.S.

PETITIONER'S EXHIBIT No. 35

(Copy)

Los Angeles,

March 16, 1942.

Application 21581

Central California Utilities Corporation
508 Security Building
Los Angeles, California

Attention: Mr. R. W. Moore, President

Dear Sirs:

Under date of October 15, 1941, we wrote you

(Testimony of George C. Woodard.)

requesting that you advise us as to the status of the Gas Fuel Service Company, with reference to resumption of service by that Company in the vicinity of Hanford and Stratford, California.

Up to the present time we have not received a reply and would be pleased to have you advise us regarding this matter as promptly as possible.

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By WILLIAM H. GORMAN,

Director, Southern District.

Admitted May 5, 1948, T.C.U.S.

PETITIONER'S EXHIBIT No. 36

(Copy)

Los Angeles,

May 22, 1942.

Application 21581

Central California Utilities Corporation
508 Security Building
Los Angeles, California

Attention: Mr. R. W. Moore, President

Gentlemen:

We have written you a number of times subsequent to October 15, 1941, requesting that you advise us as to the status of the Gas Fuel Service

(Testimony of George C. Woodard.)

Company, with reference to resumption of service by that Company in the vicinity of Hanford and Stratford, California. Up to the present time we have not received a reply.

Please give this matter your prompt attention and advise us immediately.

Yours very truly,

RAILROAD COMMISSION OF THE STATE
OF CALIFORNIA,

By WILLIAM H. GORMAN,
Director, Southern District.

Admitted May 5, 1948, T.C.U.S.

PETITIONER'S EXHIBIT No. 37.

(Copy)

June 9, 1942.

Railroad Commission
State of California
708 State Building
Los Angeles, Calif.

Attention: Mr. William H. Gorman

Gentlemen:

Re: Application 21581

Replying to your recent letter requesting status of Gas Fuel Service Company with reference to resumption of service in the vicinity of Hanford

(Testimony of George C. Woodard.)

and Stratford, California, we wish to advise that the Gas Fuel Service Company is no longer operating, having been inactive for the past three years.

Very truly yours,

GAS FUEL SERVICE

COMPANY,

F. E. DENT.

FED:BB

Admitted May 5, 1948, T.C.U.S.

By Mr. Walker:

Q. Mr. Woodard, do you recall having received telephone calls from the Railroad Commission?

A. No, I don't.

Q. Did you ever speak to anyone on the telephone in the Railroad Commission?

A. Not that I remember.

Q. You stated that Capital Service had no money to put into the California Utilities project after 1937. What was your thought with reference to the effect on the project of not supplying any additional money?

Mr. Maiden: Your Honor, I don't think his thought is competent evidence.

(Testimony of George C. Woodard.)

The Court: Are you objecting?

Mr. Maiden: I am objecting, if the Court please.

The Court: Objection sustained.

By Mr. Walker:

Q. Would you have been willing to advance any more money if you had it to advance? [137]

Mr. Maiden: Now, your Honor, I object to that too.

The Court: Objection sustained to the form of the question.

By Mr. Walker:

Q. Mr. Woodard, in making representations to Mr. Dechter with reference to disposing of the project, what did you say to him as to your thought of why the project was a good one?

Mr. Maiden: Just a moment, Mr. Woodard. I am going to object to that upon the ground it would be a self-serving declaration just as clear as it could be, and certain other statements made by this witness in that connection would just be self-serving declarations, and it calls for conclusions of the witness, too.

The Court: The objection is sustained. It is up to the Court to get the facts and not have the witness, who is not an expert, express an opinion.

By Mr. Walker:

Q. Do you know, Mr. Woodard what the physical assets of the company were in 1937?

A. As I recall it, they were about the same——

(Testimony of George C. Woodard.)

The Court: Just a moment. That calls for a yes or no answer. Do you know?

The Witness: Yes.

The Court: May I suggest to you, Mr. Witness, if you [138] will try to pay attention to the question propounded and direct your answer to that question, it might assist us in getting along a little better.

The Witness: O.K.

The Court: Now read the question again, Mr. Reporter.

(The question was read.)

The Witness: Approximately yes.

By Mr. Walker:

Q. What were they?

A. Certain leases, pipe line.

Q. Do you know what the assets were in 1938?

A. I haven't quite finished on the '37.

Q. Oh, I am sorry.

A. And the certificate of necessity.

Q. When you say, "certificate of necessity," you mean this certificate by the Railroad Commission?

A. Yes.

Q. Referred to as a certificate of public convenience and necessity? A. That is right.

Q. How did Capital Service stand to gain by putting its money into this project?

Mr. Maiden: Your Honor, I object to that upon the ground it calls for a conclusion of the witness upon questions [139] solely within the province of this Court to determine from the facts of the case.

(Testimony of George C. Woodard.)

Mr. Walker: If the Court please, the witness has already stated that Capital Service expected to put its own money into this project in addition.

The Court: I will overrule that objection and let the witness answer.

The Witness: May I hear the question?

The Court: If it does develop purely into a matter of opinion, it would not have any weight as evidence and would be given no consideration in the determination of this case for the reason that the facts are to be determined by the Court, and that an expression of a witness who is not an expert would be invading the province of the Court. You may answer.

The Witness: May I hear the question again, please?

(The question was read.)

The Witness: The question isn't clear to me.
By Mr. Walker:

Q. In 1937 you have stated that Capital Service had supplied some \$14,000.00 on top of the \$20,000.00 it had already advanced. You have also stated that Capital Service was willing to put in additional money if it had it after 1937. My question was, how did Capital Service expect to gain from the advance of additional moneys? [140]

A. Through making the stock that it owned in Central Cal. have value.

Q. How did it propose to do that?

(Testimony of George C. Woodard.)

A. By building up the small distributing system and then through further enlarging it by means of public financing.

Q. What expectations did Capital Service have of doing that after the pipe line had been sold?

Mr. Maiden: If the Court please, I object to that now. That is calling for a conclusion of this witness upon a very crucial point of this case to be decided solely upon the facts.

Mr. Walker: If the Court please, I think the Court is entitled to know what the plans of these people were.

Mr. Maiden: Well now, I think the facts don't show that.

The Court: The question is not confined to the plans. You are asking him what they expected to reap or gain by these proceedings. That could only be an expression of opinion.

Mr. Walker: Well, I will confine my question then to what their plans were.

The Court: That would be all right. There would be no objections to a question of that kind.

Mr. Walker: All right. [141]

By Mr. Walker:

Q. What plans did Capital Service have after 1937 with reference to the Central California Utilities project?

A. During a period after the flood it was impossible to—it was recognized as impossible to do anything until after the flood had been drained off.

(Testimony of George C. Woodard.)

The directors then thought that when that occurred, that if additional money could be raised, we were in approximately the same position as we were when we started.

Q. Then its plans after the flood had been drained—can you explain what they were? What did you have to do?

A. We would have to obtain additional money for the pipe lines and additional production of gas.

Q. How long did you have those plans?

A. Constantly during the entire period.

Q. When did you abandon those plans?

A. They were still existent when I left the company.

Q. Did you have any plans that looked to the accomplishment of those results, other than through the expenditure of your own money?

A. No, not to the accomplishment of the plan. We considered the sale of the project as a whole to get our money back and to get out of it.

The Court: Has counsel finished?

Mr. Walker: No, I would like to ask the witness one [142] more question.

By Mr. Walker:

Q. After the pipe lines had been destroyed or washed out and sold did that affect your plans for developing the project?

A. Not to any great extent.

Q. Why?

(Testimony of George C. Woodard.)

A. Because we still had the franchise and the gas was still in the district.

Q. What is the significance of that?

A. It only took some money to set up another pilot line as a sample to portray the picture whereby additional money could be obtained from the public.

Mr. Walker: No further questions.

Cross-Examination

By Mr. Maiden:

Q. Mr. Woodard, as treasurer and director of the Capital Service Corporation, Petitioner in this case, what were your duties?

A. I handled all of their bookkeeping transactions, financial transactions, and watched after the activities in which their projects were engaged.

Q. Well, yours was an indoor job, isn't that right, in the offices of these corporations?

A. No, sir, not entirely. [143]

Q. Were you in charge of production in any of these corporations? A. At the bakery, yes.

Q. Well, I am not talking about the bakery. I am talking about the Capital Service, Inc. and the Central California Utilities, and the Gas Fuel Oil Company.

A. I was not in charge of that, no.

Q. Well now, just what duties did you perform for those three corporations up until the time you left? A. Central California?

Q. That is right.

(Testimony of George C. Woodard.)

A. Only in an advisory capacity as to their operations in the office of G. Brashears & Company, where the books and records of Central Cal. were kept.

Q. Now, isn't it a fact that you spent practically all of your time in the offices of G. Brashears & Company? A. No, sir.

Q. Well, you were bookkeeper weren't you?

A. Well, you might call me that.

Q. Well, where did you keep books?

A. Are you speaking of the books of the Capital Service Company? Q. That is right.

A. I kept them in the office of the G. Brashears & Company, yes. [144]

Q. Well, did you keep G. Brashears & Company's books? A. No, sir.

Q. Did you have anything to do with keeping their books?

A. Yes, I was in charge of the entire cage and accounting department of G. Brashears.

Q. In addition to that you were in charge of the books of Capital Service? A. Yes, sir.

Q. In addition to that you were in charge of the books of Central California Utilities?

A. No, sir.

Q. You were not? Now, did you ever go into the field in Fresno and Kings Counties and go over these gas lines? A. Once.

Q. When was that?

A. I couldn't recall the exact date. 1936 or '37.

(Testimony of George C. Woodard.)

Q. Did you go out there with someone?

A. Mr. Brashears.

Q. What was the purpose of that? Was it to look over the equipment they had in connection with Mr. Brashears becoming interested in this venture?

A. No, that was after we were in it.

Q. That was after what?

A. After we had entered the project. [145]

Q. After you had entered the project?

A. Yes.

Q. Prior to entering the project you never had been out there? A. No.

Q. Had Mr. Brashears ever been out there to your knowledge prior to the acquisition?

A. He told me he was.

Q. Well now, Mr. Woodard, isn't it a fact that in 1939 the Gas Fuel Service Company had 31 miles of pipe gas line and meters?

A. Mr. Moore so informed me.

Q. But you don't know of your own fact.

A. I don't know whether they had one mile or 15 or 30. I never counted it.

Q. And today is the first time you heard about how much they had, is that right? A. No.

Q. Well then, I am going to ask you, what of your own knowledge—not what you heard Mr. Moore testify to today—what, of your own knowledge, physical assets did the Gas Fuel Company have in 1936 at the time G. Brashears & Company became interested in this proposition?

(Testimony of George C. Woodard.)

A. A very small distribution setup, some ten to twelve consumers, one producing well, a lease and a certificate of [146] public necessity and convenience.

Q. Now, you didn't know how much pipe line they had? A. I don't recall that I knew, no.

Q. You didn't know anything about the conditions of the pipe line either?

A. Only that I was told it wasn't in very good shape.

Q. When were you told that?

A. At the time we were talking about entering the deal.

Q. Well, didn't someone suggest that you all go out there and look over and see just how bad a shape it was in?

A. No one suggested that I go.

Q. Well, didn't it occur to you that probably you ought to make an investigation to see what it was you were buying?

A. Two directors of Brashears & Company had already gone over the ground.

Q. Well, so far as being a director was concerned, were you just really a dummy director?

A. You might ask Mr. Brashears.

Q. Did you own any stock in G. Brashears & Company? A. Yes, I did.

Q. How much?

A. I think it was 10 shares of preferred and 50 shares of common.

(Testimony of George C. Woodard.)

Q. Do you know how many shares of stock they had outstanding? [147]

A. Oh, roughly, from memory, I would say 1500 shares of eight per cent preferred; 700 shares of seven per cent and about 2100 shares of common.

Q. Did Mr. Brashears—was he a majority stockholder? A. No, he was not.

Q. Who was the majority stockholder?

A. Dr. Haigh was the largest stockholder, but he was not a majority stockholder.

Q. Did Mr. Brashears have a good sized holding of stock in the Brashears Company?

A. You mean in proportion to the total?

Q. Yes. What percentage would you say he had.

Mr. Walker: May I ask counsel what the purpose of these questions is.

Mr. Maiden: Well, I am just trying to find out whether or not he was just a dummy director on these corporations, or whether or not he really served any function other than just being a yes man and drawing up the minutes.

Mr. Walker: Well, Mr. Brashears is in the court room.

Mr. Maiden: Well, I am talking to Mr. Woodard.

Mr. Walker: Well, ask him——

Mr. Maiden: I am doing the examination, Mr. Walker.

The Witness: May I hear your question again?

Mr. Maiden: I will rephrase the question.

(Testimony of George C. Woodard.)

By Mr. Maiden:

Q. I just simply asked you if you know. If you don't you can say so. Do you know approximately what percentage of stock Mr. Brashears held in G. Brashears & Company?

A. Roughly, 10, possibly 12.

Q. Per cent? A. Yes.

Q. Did any of the other members of his family own any stock in that?

A. At one time his mother owned some, I think, 50 shares of preferred, which at her death he acquired.

Q. Now, in Capital Services, Inc., that is the Petitioner in this case, did you own any stock in 1936 in that corporation? A. No, sir.

Q. You didn't own any stock in that Central California Utilities? A. No, sir.

Q. Yet, I believe you stated you were treasurer and director of each of those three corporations; G. Brashears & Company, Capital Services and Central California Utilities?

A. I stated that I was a representative of G. Brashears & Company.

Q. Now, is it a fact that you kept the minutes of the [149] board of directors? A. No, sir.

Q. You did not? A. No, sir.

Q. Now, Mr. Woodard, what did you know about investments from the standpoint of an underwriter of an investment banker in properties such as we have involved here in 1936?

(Testimony of George C. Woodard.)

A. Well, one of my principal functions at Bra-shears & Company was to investigate each project in which they decided to invest money, loan money, or underwrite the securities.

Q. Now, what personal knowledge did you have—I say personal knowledge, now, Mr. Woodard, of the type of industry that this Petitioner was in up in Kings County, in 1936, and in 1937 and in 1938?

A. You said the Petitioner?

Q. That is right, the Capital Service, Inc. You say you were a director of it?

A. Yes, sir. They were not engaged in any enterprise in Fresno County or in Kings County. They are a creditor and a stockholder of a corporation who was.

Q. I am asking you what knowledge you have of the physical facts and circumstances existing with respect to the business of the Gas Fuel Oil Company in Kings County in 1936, 1937, 1938, 1939 or 1940? [150]

A. I only saw the property once, went over the territory; saw them once.

Q. That was back in 1936?

A. I can't recall the exact date; I think it was a little later than that, '37.

Q. In 1936 at the time your company became interested and at the time this petitioner became interested in this project, you did know that they had physical assets of pipe line already laid out and customers?

(Testimony of George C. Woodard.)

A. I was so informed by Mr. Moore and two directors of Brashears & Company.

Q. But you had no knowledge of that?

A. No, sir.

Q. You knew that the Kettleman-Lakeview Oil Company had some oil wells and leases in 1936, didn't you?

A. By the same means which I knew they had the other assets.

Q. You had no personal knowledge of that?

A. No, sir.

Q. You knew, didn't you, that there was an ample market for gas in Kings and Fresno Counties in 1936 at the time these companies became interested in this project, didn't you?

A. I believed that there was.

Q. Upon what belief was that based?

A. The population, number of farms, and the fact that [151] electricity was much more costly than gas for pumping purposes.

Q. Now, did you make a personal investigation of that, or did you get that from somebody else telling you about it?

A. I made no investigation.

Q. Well then, where did you learn those facts?

A. I obtained the gas and electric rates from Ralph Moore. I had been through Fresno and Kings Counties and was somewhat familiar with the farming activities in those areas.

Q. So that you really have no personal knowledge about the market and the demand for gas and

(Testimony of George C. Woodard.)

the availability of gas in 1936, 1937, 1938, 1939 or 1940 or any other time? Isn't that right?

A. May I hear that question again?

Mr. Maiden: Would you repeat the question, please?

(The question was read.)

Mr. Maiden: I am speaking about your personal knowledge now.

The Witness: No, had no personal absolute knowledge.

By Mr. Maiden:

Q. Now, I believe you stated that Capital Service, Inc., didn't have any money after 1937. Is that right? A. Yes, sir.

Q. And that that was the reason why they didn't advance more money to this corporation thereafter, is that right? [152]

A. I believe I so testified.

Q. Now, isn't it a fact that the Capital Service, Inc., made other investments in other businesses after it had made investments in the California Central Utilities Corporation?

A. My recollection of the three investments they made were made almost simultaneously in the same year.

Q. What were those three investments outside of—we can leave one of these out.

A. The Full-Ton Trucks and the Timm Aircraft Company.

(Testimony of George C. Woodard.)

Q. The Full-Ton Truck and the Timm Aircraft Company? A. That is right.

Q. Now, you state positively that they are the only three investments that Capital Service Company made in 1936 on through 1942?

A. No, they made minor investments subsequent to that as an outgrowth of the Full-Ton Truck Company.

Q. Well, now, just what do you mean by "minor investments"? State the nature of the investments.

A. They made advances to the bakery as a result of having——

Q. They made advances to who?

A. To the bakery, which was an outgrowth of the Full-Ton Truck deal.

Q. Now, when did they make the advancements to the bakery? [153]

A. I couldn't recall from memory. I think it was through '37, '38, and '39.

Q. When did this corporation, the Petitioner become interested in this bakery?

A. '37 or '38 I would say. I am not positive on the exact date.

Q. To what extent and how did they become interested in this bakery?

A. I couldn't recall the exact amount.

Q. Well, was it in a minor role or a major role?

A. It was a moderate amount compared to the total net worth of Capital Service.

Q. When was A & B Bakery incorporated?

(Testimony of George C. Woodard.)

A. About 1939. I think it was A & W.

Q. Well, is A & W one of the—is it the subsidiary corporation involved in the consolidated returns in this case? I believe the name of this one is A & W.

Mr. Walker: If the Court please, I think maybe I could help counsel a little bit here and speak to him off the record again.

Mr. Maiden: No, I would just rather go right ahead and develop it.

Mr. Walker: All right.

The Witness: Not having seen the consolidated returns, I wouldn't be able to answer. [154]

By Mr. Maiden:

Q. Well, I can show it to you in a hurry. Now, you had an A & B—A & W Bakery, is that right?

A. Yes, sir, it is. It is right.

Q. It is the A & W Bakery?

A. Yes, sir.

Q. That is in the consolidated return?

A. It says, "A & W."

Q. Now then, they had another bakery, named, "A & B"? A. Not to my knowledge.

Q. That is the only bakery they had?

A. That is the only one I knew anything about.

Q. Well, did you know everything that was going on in respect to the business of the Capital Service, Incorporated, while you were acting as the treasurer and director? A. Yes, sir.

Q. But you didn't know anything about their activities prior to that time?

(Testimony of George C. Woodard.)

A. Prior to what time?

Q. Prior to the time you became a director and treasurer, 1936, wasn't it?

A. Capital Service, that was at the inception of the company in 1936.

Q. Now, we have got the bakery, and you say that the bakery was incorporated in 1939, is that right? [155]

A. That is my recollection. I might not be exactly accurate on that date.

Q. Well, would it be before 1939, if you were not accurate, or after 1939?

A. I wouldn't be able to answer that question.

Q. You wouldn't be able to answer that?

A. The records will show.

Q. Did you ever hear of a Mr. E. B. Christopher? A. I don't recall.

Q. Do you know whether or not Capital Service ever had any investment in connection with E. B. Christopher?

A. It sounds—I believe that was a pilot who we made a loan to, if I am correct on the name.

Q. Well now, the Timm Aircraft Corporation, when was that incorporated? A. About 1935.

Q. About 1935. Did the Capital Service, Inc., become an investor in that corporation after its incorporation in 1935?

A. Approximately that time, '36. I forget the exact date.

Q. Well, could it have been 1937 or 1938?

(Testimony of George C. Woodard.)

A. No, it wasn't that late.

Q. Well, what about the Full-Ton Truck Company?

A. That was one of the original investments of Capital [156] Service.

Q. One of the original investments of Capital Service. Well now, when was that venture undertaken?

A. Approximately 1936.

Q. Approximately in 1936?

A. Yes, sir.

Q. Now, how long did the Capital Investment Company continue its investment in the Timm Aircraft Corporation?

A. I don't know when they sold it. They still owned the stock in the Timm Aircraft when I terminated.

Q. Was that stock greater at the time you terminated your employment than at the initial investment?

A. I don't understand the word, "greater."

Q. All right. Isn't it a fact that Capital Service, Inc., increased its investment in the Timm Aircraft Corporation from the time it first invested in that company up until the time you left in 1942?

A. I don't recall that they did.

Q. What about the Full-Ton Truck Company? What became of that?

A. It went bankrupt.

Q. It went bankrupt?

A. Yes, sir.

Q. Do you know about when it went bankrupt?

A. Within two years of the time I started. [157]

Q. Then it became bankrupt about 1937, somewhere around there?

A. Approximately.

(Testimony of George C. Woodard.)

Q. How much money did Capital Service Corporation invest in the A & W Bakery Company when it was organized?

A. I couldn't answer that from memory.

Q. Well, do you have any approximate idea?

A. No, I can't recall. It was very complicated.

Q. Well, do you know whether or not it ever increased its holdings in A & W Baking Company from the beginning until the time you left there?

A. There were never but 20 shares of stock issued in the A & W up until the time I left; 20 shares of \$1.00 par.

Q. All right. Who owned the 20 shares?

A. Capital Service.

Q. They owned the shares from its organization on up to the time you left?

A. Yes, sir.

Q. What amount of money did those 20 shares represent?

A. \$20.00 I believe.

Q. \$20.00 per share?

A. No, a dollar per share.

Q. Is that all the money that the Capital Service Inc. ever put into that A & W Baking Company, just \$20.00?

A. As stock. [158]

Q. I mean \$200.00.

A. As stock, yes.

Q. Did they make any loans to that company?

A. Yes, they made several loans to that company.

Q. In substantial amounts?

A. No, not substantial. I don't recall the exact amounts.

(Testimony of George C. Woodard.)

Mr. Walker: If the Court please, I have sat and waited and watched this development. I would like to object on the ground of the immateriality of these questions regarding the subsidiary activities of Capital-Service.

Mr. Maiden: No, it is not immaterial.

If the Court please, the Petitioner is trying to leave the impression with the Court that the only reason why it didn't furnish more money to this Gas Fuel Service Company, or the California Utilities Company was because that they didn't have the money.

The Court: Is that question in the record?

Mr. Maiden: That question is in the record brought out by this witness on his direct examination.

Isn't that right, Mr. Walker?

Mr. Walker: That is right.

The Court: Very well. It is proper to proceed. I had forgotten.

Mr. Walker: So had I. [159]

Mr. Maiden: Do we have a question pending, Mr. Reporter?

(The record was read.)

By Mr. Maiden:

Q. All right, can you give this Court any approximation in the aggregate of the amount invested by this Petitioner in the A & W Baking Company after it was organized—whatever date

(Testimony of George C. Woodard.)

that was, the record is going to show it—up until the time you left there in 1942.

A. I would say ten to twelve thousand dollars.

Q. Over that same period of time they made additional investments in the Timm Aircraft Corporation, isn't that right?

A. I don't recall that they made additional investments in the Timm Aircraft.

Q. Now, did they make any investments in 1942 while you were in there; any other ventures?

A. I was not with them in '42.

Q. When did you leave them?

A. January—December 31, 1941.

Q. December 31, 1941. So you don't know anything on earth about what happened with this Capital Service, Incorporated, or any of these subsidiaries after that time, is that right?

A. I had no place in the picture after I terminated my employment. [160]

The Court: Anything further from this witness.

Mr. Maiden: Just one second, if the Court please.

By Mr. Maiden:

Q. By the way, there is just this one thing: I believe you said something about this Petitioner—not this Petitioner, but rather the Gas Fuel Oil Company settling a lawsuit with the Shell Oil Company or settling some kind of litigation, a claim?

A. I haven't mentioned anything about it.

Q. Well, is that a fact or not?

A. Yes, they did.

(Testimony of George C. Woodard.)

Q. I will ask you whether or not the proceeds from that settlement were not applied to the books of the Capital Service, Inc., as a credit against the indebtedness of Central California Utilities Corporation? A. Yes, it was.

Mr. Maiden: I believe that is all, if the Court please.

Mr. Walker: Just a very few questions, if the Court please, and I think we will be through with this witness.

The Court: All right.

Redirect Examination

By Mr. Walker:

Q. When you left the G. Brashears & Company for the Ryan [161] Company, why did you leave, Mr. Woodard?

A. There were very many reasons. The principal one was that I felt that the type of business Brashears & Company was engaged in was extinct for some time to come because of the war scare.

Q. I call your attention to the sale of the pipe line. Could you state why that line was sold?

A. Mr. Friend advised us——

Mr. Maiden: If your Honor, please, I object to that. It is hearsay and I object to it. I don't think this witness knows anything about it anyhow.

The Court: Do you know to your own knowledge?

The Witness: I know why we decided to sell it, yes, sir.

(Testimony of George C. Woodard.)

Mr. Maiden: He can tell why they decided to sell it, if he knows, but I want him to keep out of it any statement of any person who is not here in the case.

By Mr. Walker:

Q. Just tell the Court why you decided to sell it.

A. Because we were informed that the ranchers in some cases were stealing the pipe, and in other cases, they were damaging it and it was necessary to either put it under ground or if we wanted to get anything out of the pipe, to sell it then.

Q. You have been asked many questions about what your [162] personal knowledge was of this project. You stated that you were on the grounds once. Can you state in your experience with the Ryan Company how much action you take without actual personal knowledge?

A. 95 per cent of the things that I do are without absolute personal knowledge.

Q. Do you rely to any extent—or what information do you rely on, if you have that lack of personal knowledge?

A. The people who are assigned certain responsibilities and authority who pass the information on to me on which to base a decision.

Q. Was that the way in which you made the decisions with reference to Central California Utilities? A. Yes.

Q. Could you state, did Capital Service have an ample supply of money in 1937 and following years?

(Testimony of George C. Woodard.)

A. It did not.

Q. You have stated on cross-examination with reference to activities with the Full-Ton Truck and the Timm Aircraft—where did such money come from?

A. Any money put in by Capital Service after 1937 was borrowed by them from G. Brashears & Company.

Q. Then it was not the money of Capital Service?

A. That is correct.

Q. Without the corresponding indebtedness owed to someone [163] else?

A. That is correct.

Q. Could you tell why the borrowed money was used in preference in the Full-Ton Truck Company and in the Timm Aircraft business over the Central California Utilities' project?

Mr. Maiden: If he knows.

Mr. Walker: If he knows.

By Mr. Walker:

Q. Do you know, first?

A. I thought I did.

Q. What did you think?

The Court: Well, you know whether you know or not.

Mr. Maiden: No, I want him——

The Witness: I know my opinion.

The Court: That isn't the question propounded to you, Mr. Witness. The question is, do you know?

(Testimony of George C. Woodard.)

By Mr. Walker:

Q. Well, as an officer of Capital Service, Inc., was it necessary for you to decide which of several projects would take the money of the organization?

Mr. Maiden: Now, just a second. At this point, your Honor, I am going to make the objection to asking about their decisions and so on and so forth upon the ground that the best evidence would be found in the minutes of this corporation's [164] books.

The Court: Well, counsel for Petitioner, you understand that where an objection is made to evidence on the ground that it is not the best evidence, it must be ruled out. The best evidence in the case of this kind would either be the corporate records, or the knowledge of the man or men who had the information that they passed on to the directors. That would be the best evidence if we strictly adhered to the rules of evidence, and we must do that when an objection is made.

By Mr. Walker:

Q. Do you know what men were in possession of the facts with reference to the Full-Ton Truck and the Timm Aircraft projects? A. Yes.

Q. Who were they? A. I was.

Q. You were in possession of the facts, yourself of those projects? A. Yes, sir.

Q. Were you in possession also of the facts of the Central California Utilities' project?

A. After the first year or two, yes.

(Testimony of George C. Woodard.)

Q. Through information received by you, upon which you felt it was proper to act? [165]

A. That is correct.

Q. Did you yourself make any decision with reference to which project should be favored?

A. I made my—formed my own opinion and made recommendations accordingly.

Q. What recommendations did you make?

Mr. Maiden: Just a minute, if the Court please. That took place at a board of directors' meeting.

Mr. Walker: Well, let's ask him.

By Mr. Walker:

Q. Did it take place at a Board of directors' meeting?

The Court: I don't understand the witness, I am frank to say, when he says that 90 per cent of the information was second hand to him, in effect, a while ago.

Mr. Maiden: That is correct, and he had no personal knowledge with respect to this.

The Court: That is what the witness has stated. Now, I can't understand it.

Mr. Walker: Well, may I ask if the record won't already show the question of whether or not the information that you had with reference to these projects was information that you yourself had, or had been received from others?

The Witness: I was the sole representative of Capital Service and G. Brashears & Company in representing them in connection with Timm Aircraft and the bakery. [166]

(Testimony of George C. Woodard.)

The Court: Mr. Witness, will you please answer the question and it will save quite a bit of trouble.

The Witness: I will try, sir.

The Court: Your answer is not responsive to the question propounded.

The Witness: May I have the question again?

Mr. Walker: Would you read the question, please?

(The question was read.)

The Witness: Yes.

Mr. Maiden: Well, that is an alternative question. I don't know what your answer means.

The Witness: Well, it was both.

By Mr. Walker:

Q. You had personal knowledge and you also had information received from others?

A. Yes, sir.

Q. You used that information in making recommendations? A. Yes, sir.

Q. Were those recommendations made at a board meeting?

A. Not always. At times, yes. At other times, no.

Q. You cannot say that they were always made at board meetings?

A. No, they were not always made at board meetings.

Q. Can you say what recommendations were made other than at board meetings? [167]

Mr. Maiden: Now, your Honor, this witness can't answer that.

(Testimony of George C. Woodard.)

The Court: Are you objecting?

Mr. Maiden: I am objecting.

The Court: The objection is sustained.

By Mr. Walker:

Q. Do you have information in your possession, either of your personal knowledge or from what you have learned of others, that would put you in a position of recommending——

Mr. Maiden: Answer that yes or no.

By Mr. Walker:

Q. ——which projects should be followed?

A. No.

Q. What was that information?

Mr. Maiden: Now, if the Court please, this witness has already said that sometimes these recommendations were made at directors' meetings, and at other times they were not.

The Court: The question is so general, I don't see how any witness could answer it.

Mr. Walker: Well, if the Court please, I think there is a very good reason why some of these projects were favored over others, and this witness is in possession of the reasons why.

Mr. Maiden: But not the best evidence. Now, the [168] best evidence is going to be, where he made recommendations at a board of directors meeting, let him produce the minutes of the board of directors' meeting.

Mr. Walker: He has just stated he did not confine his recommendations to those meetings.

(Testimony of George C. Woodard.)

Mr. Maiden: Well, the trouble is we don't know if these were made at board of directors' meetings and he don't know himself because he said some were made at board of directors' meetings and some were not. I want the facts in this case.

Mr. Walker: Well, if the Court please, that is what I want too, and I think the facts depend upon the knowledge of the individual. If he has seen fit to undertake responsible jobs, as he has now at Ryan Aircraft and as he previously had at G. Brashears & Company, and in the ordinary course of business, he took action from the information he had from reliable sources, I think the Court is entitled to know.

The Court: But, counsel for the Petitioner, you know that under the rules of evidence that when an objection is made that evidence produced is not the best, it is incumbent upon the opposite party to produce the best evidence. Now, this witness has already testified that he knows, but very little personally about these transactions. Now, are you seeking to impeach your own witness? [169]

Mr. Walker: No, if the Court please.

The Court: After he has gone on record to the extent that 95 per cent of the information that he has is not personal information and therefore he must have gotten it from some other source and the other sources would be the best evidence when opposing counsel insists upon the best evidence. That is the rules of evidence.

(Testimony of George C. Woodard.)

Mr. Walker: Well, I understand that, of course, your Honor. I have no further questions.

Mr. Maiden: No further questions.

The Court: May I ask the witness, just for my own information, what did the Capital Service Company pay for this certificate of convenience and necessity?

The Witness: It was not owned by Capital Service, your Honor, it was — the only thing Capital Service acquired was stock in the corporation and a note for the money that it advanced.

The Court: Well, what, if anything was paid, then, by the holder for this certificate of convenience and necessity?

The Witness: I don't think there is any charge for that other than the expense of getting it, and it had been obtained by the subsidiary of Inland before Capital Service entered the picture.

The Court: The reason I asked that was, my information, [170] and I probably could take judicial information of the laws of the State of California as to the fact that the certificates are issued to anyone who can make a proper showing as to the background and there is no monetary value involved in the ownership. The reason I asked that is quite a little stress has been made here today that among the assets involved here is a certificate of convenience and necessity and I was wondering if the law was different in California from what I usually understand it, that such things as that do not involve any cost.

(Testimony of George C. Woodard.)

Mr. Walker: No. Petitioner makes no such contention.

The Court: Very well. That is all for this witness then.

(Witness excused.)

The Court: Well, gentlemen, we will suspend until 9:30 o'clock tomorrow morning.

(Whereupon at 4:50 o'clock, p.m., an adjournment was taken until 9:30 o'clock a.m., Thursday, May 6, 1948.) [171]

Whereupon,

HARRY W. MOORE

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. State your name and address, please.

A. Harry W. Moore, 215 W. 7th Street, Los Angeles.

Q. Mr. Moore, what is your business or profession?

A. Certified Public Accountant.

Q. How long have you been in that business?

A. Since 1921.

Q. Since 1921?

A. Right.

Q. In the course of that business, have you had

(Testimony of Harry W. Moore.)

occasion to be familiar with the books and records of Inland Public Service Company?

A. Yes, sir.

Q. What was that occasion?

A. We, I think, set up the original books and records for the Inland Public Service Company on or about 1933, and the general books and records of the Inland Public Service Company were kept in our office from field information sent down by Mr. Huse in the San Joaquin Valley, and we kept those books, until I think, 1935. [174]

Q. Did you have occasion to prepare any statements of assets and liabilities for the Inland Public Service Company? A. Yes, sir.

Q. Did that statement of assets and liabilities include the assets and liabilities of the subsidiary company? A. Yes, sir.

Q. Can you state whether or not you have knowledge of what those assets and liabilities were as of the end of 1935?

A. I know what the assets and liabilities were as shown by the books and records at that time.

Q. Did you make any statement of assets and liabilities from those books and records?

A. Yes, sir.

Q. I show you a document which is entitled "Inland Public Service Company, Statement of Assets, Liabilities and Capital of Inland Public Service Company and its Subsidiaries, Gas Fuel Service Company and Kettleman-Lakeview Oil and Gas

(Testimony of Harry W. Moore.)

Company as of December 31, 1935." Is that the statement of assets and liabilities that you say you prepared?

A. Yes, sir.

Q. And that was prepared from the books and records of the Inland Public Service Company and its subsidiaries?

A. That's right.

Q. Can you state what your knowledge was of the current assets of the Inland Company and its subsidiaries as of that date? [175]

A. Well, the books and records showed that the total amount of the current assets was approximately fifteen, sixteen hundred dollars.

Q. And would the books and records show what the status of the liabilities was as of that date?

A. Approximately \$60,000.00.

Q. Did the company show any other assets at that time?

A. Yes, the company had certain—The Inland Public Service Company was a holding company for the shares of capital stock of the Gas Fuel Service Company and the Kettleman-Lakeview Oil and Gas Company. When I say the Inland Public Service, I mean the combined assets, because the assets of the company itself, was only shares of capital stock.

Q. The combined enterprise of Inland and its subsidiaries?

A. They had certain wells, certain oil leases, and I think oil wells in the San Joaquin Valley, and I think pipe lines, franchises, and things of that kind.

(Testimony of Harry W. Moore.)

Q. Would the books show what the values of those assets were?

A. The books showed a value upon the assets.

Q. Did the statement which you prepared reflect those values?

A. The statement that we prepared reflected the values that had been placed upon the assets, yes.

Q. How were those values placed?

A. The original statements that were made up by our office show that the wells and leases were set up at a valuation as valued by Walter Stadler, petroleum geologist, and that the other valuations were formed by Louis Henkel, consulting engineer, and I am pretty sure that the books and records were set up based on those original values.

Q. Per the engineer and per the individual that you just mentioned?

A. That's right. This is the original statement that was made up based on those valuations.

Mr. Maiden: Who made that up?

The Witness: We made it up in our office based on those values.

Mr. Maiden: And these valuations came from Louis Henkel and Walter Stadler, is that right?

The Witness: That's right.

Mr. Maiden: Were they employees——

Mr. Walker: Just a minute. I will finish with him and then you can go ahead.

By Mr. Walker:

Q. You stated that the current assets were in

(Testimony of Harry W. Moore.)

the amount of some fifteen hundred or eighteen hundred dollars? A. That's right.

Q. What do you mean by current assets? [177]

A. I mean the cash and accounts receivable.

Q. What do you mean by the current liabilities?

A. The accounts payable, bank overdrafts, royalties payable, and other contracts payable.

Q. Were there any assets, to your knowledge, which could have been converted into cash?

A. Well, I think at that particular time, they probably could have converted some of the assets into cash. Yes. Back in '33 and '34.

Q. This was in '35 now.

A. That I don't know, whether they were converted into cash or not.

Q. Did you, Mr. Moore, have occasion to become familiar with the books and records of Capital Service, Incorporated? A. I did.

Q. Did you prepare statements of the assets of Capital Service, Incorporated? A. I did.

Q. Did those statements reflect the position of Capital Service, Incorporated, in connection with the Timm Aircraft, and the A and W Bakery?

A. They did.

Q. Could you state to the Court, the evolution of the bakery project?

A. The Capital Service, Incorporated, acquired certain [178] shares of capital stock, and made certain advances to the Ful-Ton Truck Company,

(Testimony of Harry W. Moore.)

which was a company that was manufacturing trucks.

The Court: You are testifying from what you find from the entries in the books?

The Witness: That's right; in 1930.

Mr. Walker: What year?

The Witness: April 30, 1940.

Mr. Walker: If the Court please, I would like at this time to clear up the confusion which seemed to exist at the end of Mr. Woodard's testimony.

The Witness: In the latter part of 1937, we found the Ful-Ton Truck Company had gone into 77 B, and the assets at the time that the company was under 77 B, consisted of various trucks, and trucks in process of production, and Capital Service finally ended up with a number of trucks. Capital Service subsequently used these trucks to start distributing routes for a bakery called the Kolb Distributing Company.

The next stage was, I think, they acquired a bakery, and finally merged the Kolb Distributing Company into the A. and W. Baking Company.
By Mr. Walker:

Q. Did the acquisition of the bakery have anything to do with this Kolb Distributing Company?

A. I think it was separate at the time that it was started, and then it was finally brought together. I think the reason [179] that they got the bakery was because they had the Kolb Distributing Company.

(Testimony of Harry W. Moore.)

Mr. Maiden: Is that speculation on your part, Mr. Moore? You say you think.

The Witness: Well, I don't know.

Q. (By Mr. Walker): What do the books show as to time, the way Kolb Distributing and the bakery came?

A. The books show that the first advances to Ful-Ton Truck was in April and May of 1937. It shows that in December of 1937, the Ful-Ton Truck Company goes into 77 B. The agreement between the Kolb Bakery and the Capital Service for the Capital Service to set up the Kolb Distributing Company was in June of 1938. And the A. and W. Baking Company came into existence in December of 1938.

Q. Are you able to say what the position of Capital Service was with reference to loans from G. Brashears and Company?

A. As of what dates?

Q. As of any time following January 1, 1938.

A. The general ledger of the Capital Service, Incorporated, shows in an account headed, "Notes Payable, G. Brashears and Company" indicates the first advances by G. Brashears and Company to the Capital Service under date of June 30, 1937, in the amount of \$23,500. At the end of 1937, the balance of the G. Brashears and Company was \$41,500.00. [LSC]

Q. In 1938?

A. At the end of 1938, the amount was \$36,333.

(Testimony of Harry W. Moore.)

Q. '39? A. \$41,203.28.

Q. '40? A. '40 was \$55,845.45.

Q. '41? A. \$55,824.34.

Q. And '42?

A. None. At the end of '42, the record indicates that the amount was transferred to a note payable. \$13,095.24 was transferred to a note payable, and the total amount of the notes payable, as of the end of '42, was \$13,095.24.

Q. You mean 1942?

A. 1942. December 31, 1942.

Mr. Walker: No further questions.

Cross-Examination

By Mr. Maiden:

Q. Mr. Moore, this statement of assets and liabilities and capital of Inland Public Service Company and its subsidiaries, Gas Fuel Service Company and Kettleman-Lakeview Oil Company, which you just identified being as of December 31, 1935, I believe, show the pipe lines under "assets" at a value of \$44,740.78, is that right?

A. That's right. And you will note that a part of the [181] land and leases and a part of the wells had been abandoned by that time.

Q. I didn't ask you anything about that, Mr. Moore. This also shows meters and regulators of \$354.56, is that right? A. That's right.

Q. It shows general office equipment?

A. \$463.98.

Q. Miscellaneous equipment of \$407.55?

(Testimony of Harry W. Moore.)

A. Right.

Q. And it does have a set-up here for land and leases, \$901,112.50, is that correct?

A. That's right.

Q. And then it shows wells in the amount of \$200,000.00, which as you so gratuitously pointed out had been quitclaimed and lost; that was of December 31, 1935?

A. That's right.

Q. This also shows in "liabilities," Anderson-Friend Bonus Contract.

A. Bonus Account.

Q. In other words, they had some sort of arrangement whereby they were using the gas well of Anderson-Friend, is that right, and they were paying him some bonus?

A. That note probably will tell you down at number two.

Q. "Eliminated through quitclaiming leases. These [182] adjustments will require a new capital set-up." Does that apply also to the Friend-Fiske-Roberts Account Payable? What would that be, do you know?

A. I don't know.

Q. "Contingent Account Payable-Natural Gas Corporation of California." What would that represent, do you know anything about that?

A. I haven't seen the figures for 12 years.

Q. Well, were you present during the testimony of Mr. Moore yesterday?

A. I was here from about 3 o'clock on.

Q. Did you hear Mr. Moore testify that Kettleman-Lakeview Oil Company had leases on land and wells at the time they started up in '36 and '37?

(Testimony of Harry W. Moore.)

A. At the time that I came, I did not.

Q. You didn't hear him testify to that?

A. No.

Q. You don't know whether or not these quitclaim leases on wells and lands were regained after December 31, 1935, do you?

A. I do not. No. All I know is that that statement was prepared at that time by our office, and typed by our office from the books and records. I haven't seen the books since 1930, about that time.

Q. And the values that you have used in this report [183] came from some valuation engineers?

A. That's right.

Q. Do you know whether or not those valuation engineers, do you know how they arrived at their value?

A. No, I do not.

Q. You don't know how accurate that value is, do you?

A. No.

Q. So as far as you know, they could be understated or overstated?

A. That's right.

Mr. Maiden: No further questions.

The Court: Is there anything further?

Mr. Walker: Nothing from this witness.

Mr. Maiden: Just a moment, I have some more, if the Court please. I just spoke up a little too quick.

Cross-Examination (Continued)

By Mr. Maiden:

Q. Mr. Moore, I will ask you to examine this

(Testimony of Harry W. Moore.)

document which purports to be an audit statement made by you as of April 30, 1940, with respect to the Capital Service Incorporated, their financial condition, and will ask you if you can identify that as being a copy of your document, disregarding the red mark.

A. This appears to be a copy of this report prepared by our office. [184]

Q. Now, while Mr. Walker is examining that document, Mr. Moore, I will ask you, keeping in mind the same questions asked about the former document, if you will identify this document dated February 4, 1941?

A. I am sure it is a copy of the report—without checking every figure in it. We can furnish the actual copies that were made, if you want to check the wording.

Q. I want this identified as positively a copy. If you have any reservations to make, let's check it with the copy that you have.

A. If you want me to check it, I'll be glad to do it right now.

Q. I want you to check it and tell the Court whether or not what I handed you is an exact copy, so that I can offer it in evidence. You might do that with both documents, if there was any such reservation with respect to the first one.

A. I will be very glad to compare them. I would say this was a copy, yes.

Mr. Maiden: If the Court please, I would now

(Testimony of Harry W. Moore.)

like to offer in evidence Respondent's Exhibit K, the audit statement just identified by Mr. Moore, bearing date of July 1, 1941, and showing the financial condition of the company as of April 30, 1940.

Mr. Walker: No objection.

Mr. Maiden: If the Court please, in regards to this [185] document, there are certain red pencil marks that have been made on them which emphasize certain phases of it. Therefore, I would like leave to withdraw this and have a copy made, with Mr. Walker, and substitute another copy for this.

Mr. Walker: It is agreeable to me.

Mr. Maiden: I am doing this for Mr. Walker's benefit because we have underlined certain parts of this thing, and he probably might not want those points highlighted to the exclusion of any other point.

Mr. Walker: I think a copy can be supplied in lieu of this one.

The Court: It will be received in evidence as Respondent's Exhibit K, with leave given to withdraw the original, and substitute a copy of the same, omitting the emphasis in the original. Is that satisfactory?

Mr. Walker: That is satisfactory.

(The document above referred to was received in evidence and marked Respondent's Exhibit K.)

(Testimony of Harry W. Moore.)

RESPONDENT'S EXHIBIT K

Thomas & Moore
Certified Public Accountants
215 West Seventh Street
Los Angeles, Calif.

July 1, 1940

Capital Service, Inc.,
510 South Spring Street,
Los Angeles, California.

Gentlemen—

We have made a detailed audit of your books and records as of April 30, 1940, checking all cash receipts and cash disbursements, which are all properly accounted for. We have also made a survey of the various deals that have been entered into by Capital Service, Inc., and submit herewith the following statement and comments, which in our opinion reflect your financial condition as of April 30, 1940—

Statement of Assets, Liability and Capital
as of April 30, 1940.

General Comments—

Capital Service, Inc., was incorporated under the laws of the State of California on April 23, 1936, with an authorized capital of 50,000 shares of Class A capital stock having a par value of \$10.00 per share and 50,000 shares of Class B capital stock, with a par value of \$1.00 per share. The corpora-

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

tion was organized for the principal purpose of assisting financially in the development and the sponsoring of commercial enterprises.

The Class A shares are entitled to 6% cumulative dividends and any further earnings are to be distributed, one-half to the holders of the Class A shares and one-half to the holders of the Class B shares.

Under date of July 14, 1936, a permit was obtained from the Commissioner of Corporations of the State of California, authorizing the sale and issuance of:

(1) 15,000 shares of Class A stock to be sold at par for cash, subject to a selling expense of not to exceed 6%; and

(2) Whenever and as often as shares are sold and issued under paragraph (1), to issue a certificate or certificates of its Class B stock to any or all of the following-named persons: G. Brashears, E. A. Grumm, M. B. Price, G. C. Woodard and F. E. Dent for organization and management services, but not to exceed 15,000 shares.

To April 30, 1940, there have been issued 10,995 shares of Class A stock and 10,995 shares of Class B stock. The Class B shares were required to be escrowed subject to the further order of the Commissioner of Corporations. Under date of March 18, 1937, the Commissioner of Corporations authorized the transfer in escrow of the 10,995 shares of Class B stock to G. Brashears & Company. The

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)
expenses in connection with the organization of the company and the issuance of the stock were paid by G. Brashears & Company with the exception of the commission of 6% upon the sale of the stock, being the amount paid by G. Brashears & Company to its salesmen.

The principal ventures engaged in by Capital Service, Inc., are the following:

E. B. Christopher
Timm Aircraft Corporation
Central California Utilities
Ful-Ton Truck Company and Bakery
Venture

E. B. Christopher—

During February and March of 1937 advances were made to E. B. Christopher totaling \$1,850.00 upon a deal in connection with an airplane factory in Wichita, Kansas, a chattel mortgage upon two planes then owned by Mr. Christopher being taken as collateral for the advance. In the early part of 1938 one plane was wrecked on the Ridge Route, Mr. Christopher losing his life in the wreck. \$825.00 was recovered upon sale of the remaining plane and \$1,025.00 written off as a loss.

Timm Aircraft Corporation—

During the period of time that the organization

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

and financing of Capital Service, Inc., was in progress, G. Brashears & Company, for the account of Capital Service, Inc., entered into an agreement with O. W. Timm and W. D. Timm for the preliminary financing of the Timm Aircraft Corporation, and \$7,000.00 was advanced upon this agreement. Subsequent advances by Capital Service, Inc., to O. W. and W. D. Timm and the Timm Aircraft Corporation totaled \$38,000.00 which, together with the original \$7,000.00, made aggregate advances of \$45,000.00. Interest was accrued upon the notes as of June 30, 1939, of \$650.00. As of June 30, 1937, certificate No. T13 for 35,000 shares of capital stock of the Timm Aircraft Corporation was issued to Capital Service, Inc., and the sum of \$35,000.00 was credited against the advances. Subsequently \$10,650.00 was received in cash by Capital Service, Inc., covering the remainder of the \$10,000.00 advanced and the \$650.00 of interest. In addition to the 35,000 shares of capital stock received for the \$35,000.00 of indebtedness cancelled, Capital Service, Inc., received 9,800 shares of stock from O. W. Timm and W. D. Timm at no cost.

The Timm Aircraft Corporation subsequently made application to the Division of Corporations of the State of California for the sale and issuance of 99,000 shares of capital stock, and the Division of Corporations required that 11,000 shares of capital stock heretofore issued be returned to the treasury and cancelled. Therefore 4,400 shares of the

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

9,800 shares of capital stock received from O. W. Timm and W. D. Timm were surrendered to the corporation for cancellation and a new certificate issued for 5,400 shares.

In accordance with an agreement dated May 1, 1936, between O. W. Timm and W. D. Timm and G. Brashears & Company, and amended January 18, 1939, certain shareholders of the corporation, Capital Service, Inc., O. W. Timm and W. D. Timm agreed to transfer to G. Brashears & Company a total of 15,000 shares of the corporation's \$1.00 par value stock owned by them. O. W. Timm and W. D. Timm transferred to G. Brashears & Company 5,400 shares and 3,600 shares, respectively, a total of 9,000 shares owned by them individually. G. Brashears & Company declined the delivery from Capital Service, Inc., of the 6,000 shares it was to receive from such affiliate and donated the 6,000 shares to Capital Service, Inc.

Under date of March 27, 1939, Capital Service, Inc., purchased from O. W. Timm 1,250 shares for a total consideration of \$1,000.00, being at the rate of \$.80 per share, which shares of capital stock are issued in the name of George C. Woodard as nominee for Capital Service, Inc. Therefore, as of April 30, 1940, Capital Service, Inc., owned 41,650 shares of capital stock of the Timm Aircraft Corporation, at a total cost of \$36,000.00, making a net cost of approximately \$.864 per share.

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)
Central California Utilities—

Capital Service, Inc., owns 188,550 shares of the capital stock of Central California Utilities, which are carried upon their books at a net cost of \$1,300.00, and the records show advances to the Central California Utilities in the amount of \$31,567.81.

The Central California Utilities is the outgrowth of the reorganization of Inland Public Service Company. 187,500 shares of the capital stock were received for promotional services and are subject to a one-eighth interest in any profits that may be received therefrom, the assignment of the interest being to Elmer J. Walther, attorney at law, as part of his fee.

1,500 shares of capital stock were acquired by purchase from H. A. Savage. Capital Service, Inc., and R. W. Moore entered into an agreement with Mr. Savage, to purchase 3,000 shares of the stock at \$1.00 per share, and subsequently there was paid to him \$2,600.00 in full settlement of the agreement, \$1,300.00 of which was paid by R. W. Moore and \$1,300.00 by Capital Service, Inc. For the \$1,300.00 paid by Capital Service, Inc., 1,500 shares of Capital stock were received.

Mr. Henry K. Elder, attorney at law, had a claim against Kettleman Lakeview Oil & Gas Company, Ltd., and/or Gas Fuel Service Company, subsidiaries of Central California Utilities, for previous

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

legal services, and in settlement thereof Capital Service, Inc., delivered to him 450 shares of the capital stock that had been purchased from Mr. Savage, leaving Capital Service, Inc., with 188,550 shares of stock, at a net cost of \$1,300.00. The 187,500 shares of capital stock are in escrow with the Bank of America, subject to the further order of the Commissioner of Corporations.

The only asset remaining appears to be the franchise for distribution of gas held by Gas Fuel Service Company, a subsidiary. The company originally had two gas wells, one of which was ruined by the derrick blowing down, allowing the gas to blow out and ruin the structure. The structure of the second well was damaged by dynamite blasts in testing adjacent territory. One new well was drilled but a water shut-off could not be obtained.

Ful-Ton Truck Company and Bakery Venture—

The company's investment in stock in Ful-Ton Truck Company consisted of the purchase of 5,900 shares (representing approximately 59% of the total stock), at a cost of \$26,000.00. In April and May, 1937, the company made unsecured loans to Ful-Ton Truck Company amounting to \$16,500.00. During June, 1937, the company loaned an additional \$15,725.00, secured by 17 trucks, for the purpose of completing these 17 trucks and 13 addi-

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

tional trucks. In July, 1937, they had finished the 30 trucks and sold and delivered the 13 trucks retained by them. At that time Ful-Ton Truck Company had on hand parts and materials for approximately 60 additional trucks and it appeared that there was a market for this type of vehicle. The Ful-Ton Truck Company, however, was again out of funds and confidence had been lost in its management. A deal therefore was made with National Iron Works of San Diego in which they agreed to buy the parts for 30 trucks, and to complete the construction thereof in their plant at San Diego. The arrangement included the sale of these trucks by Ful-Ton Truck Company. In order to consummate this deal it was necessary to arrange funds to the extent of \$30,000.00 to National Iron Works. Capital Service, Inc., therefore purchased 20,000 shares of National Iron Works stock at \$1.00 per share, borrowing such funds from the United States National Bank of San Diego and Citizens National Bank of Monrovia. (These sums were subsequently repaid.) Capital Service, Inc., purchased 20,000 shares of National Iron Works stock from U. S. Holding Company, a substantial stockholder of National Iron Works, who in turn was to lend such funds to National Iron Works. G. Brashears & Company bought, in accommodation to Capital Service, Inc., 10,000 shares of National Iron Works at \$1.00 per share. The arrangement included the sale

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

at a later date by G. Brashears & Company of the 30,000 shares of National Iron Works stock. This was accomplished at a later date without profit or loss to Capital Service, Inc.

In December, 1937, Ful-Ton Truck Company filed a petition under 77(b). During the period of time immediately prior to the filing of the petition and subsequent to the previous advances to the Ful-Ton Truck Company set forth above, additional sums were advanced to Ful-Ton Truck Company on unsecured loans totaling \$3,325.00. During this same period of time Capital Service, Inc., was reimbursed the sum of \$7,401.28 upon its secured loans, 8 trucks having been sold by Ful-Ton Truck Company. As of the date of filing the petition under 77(b) the investment was as follows—

Investment in Stock	\$26,000.00
Advances on Unsecured Loans.....	19,825.00
Secured Loans—9 trucks as collateral...	8,323.72

There was subsequently expended on the 9 remaining trucks \$1,379.99 for conditioning for sale, and later 3 of the 9 trucks were sold. Additional advances were made during the period the company was under 77(b) totaling \$1,512.66, of which \$772.84 was recovered, leaving the net amount advanced and unrecovered, \$739.82.

In an endeavor to dispose of the remaining trucks and to supply an outlet for additional trucks be-

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

ing built by National Iron Works, 3 trucks were put on trial at Kolb's Bakery for a period of some four months. On June 8, 1938, an agreement was entered into between Kolb's Bakery and Capital Service, Inc., whereby Kolb's granted to Capital Service, Inc., the exclusive sales rights to its bakery products at a 40% discount, the operations to be carried on under the name of Kolb's Distributing Company, and stockholders of Kolb's Bakery gave Capital Service, Inc., an option to purchase 90% of the stock of Kolb's Bakery at the total purchase price of \$100.00. Kolb's Distributing Company took over the 6 trucks from Capital Service, Inc. Kolb's Distributing Company thereafter purchased 15 Ful-Ton Trucks from National Iron Works.

On December 31, 1939, the A. & W. Baking Company, a corporation, was organized to take over the Kolb's Distributing Company, which company also took over the operations of Kolb's Bakery. The total investment of Capital Service, Inc., in the 5,900 shares of the Ful-Ton Truck Company totaling \$26,000.00, the unsecured advances to the Ful-Ton Truck Company totaling \$19,825.00, and unrecovered advances after the Ful-Ton Truck Company filed its petition under 77(b) totaling \$739.82, making a total of \$46,564.82, was written off the books of Capital Service, Inc., as a loss, and \$26,-

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

344.03 is carried forward on the books as an asset, being the total investment in the bakery venture as of April 30, 1940. The \$26,344.03 is represented by the amounts disbursed for trucks and sums due from the A. & W. Baking Company, either for assets transferred or cash advanced, together with the various routes in the distributing system. We are advised by the officers of the Capital Service Company that their future plans contemplate a consolidation with some other bakery or the sale of their option and the distributing system, but no arrangement has as yet been consummated. The ultimate value of the asset will depend upon the success of the project, which is contingent upon increasing the present volume of sales, or the consolidation as above outlined.

Notes and Accounts Payable—

The notes and accounts payable are to G. Brashears & Company, totaling, \$43,739.20. Of the above amount \$41,500.00 was advanced from May 1 to December 31, 1937, the funds having been used by Capital Service, Inc., in advances to the Ful-Ton Truck Company and Kolb's Distributing Company. Notes and accounts payable to G. Brashears & Company at one time reached a total of \$51,134.00. No interest has been paid to G. Brashears & Company or accrued upon the obligation, G. Brashears & Company advising us that it is not

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)
 their present intention to make any charges for interest.

Respectfully submitted,
THOMAS & MOORE,
 Certified Public Accountants.

By /s/ **HARRY W. MOORE.**

Statement of Assets, Liabilities and Capital
 as of April 30, 1940

ASSETS

Cash in Bank		\$ 631.80
Investment in Central California Utilities Corporation—		
188,550 shares of stock—at cost.....	\$ 1,300.00	
Note Receivable	31,567.81	32,867.81
Investment in Bakeries Deal.....		26,344.03
Investment in Timm Aircraft Corporation—		
41,650 shares of stock—at cost.....		36,000.00
Miscellaneous Assets—		
Note Receivable, Peter J. Bressi.....	\$ 59.00	
Note Receivable, George Kent.....	129.03	
Stock, A. & W. Baking Company—		
20 shares—at cost	20.00	208.03
Other Assets—		
Commissions paid on sale of capital stock....	\$ 6,597.00	
Good Will and Management.....	10,995.00	17,592.00
		<u>\$113,643.67</u>

LIABILITIES

Notes Payable—G. Brashears & Company.....	\$ 40,036.00
Accounts Payable—G. Brashears & Company..	3,703.20
	<u>\$ 43,739.20</u>

(Testimony of Harry W. Moore.)

Respondent's Exhibit K—(Continued)

CAPITAL

Authorized—50,000 shares Class A Stock—		
Par Value \$10.00.....	\$500,000.00	
Unissued	390,050.00	
Issued and Outstanding.....	\$109,950.00	
Authorized—50,000 shares Class B Stock—		
Par value \$1.00.....	\$ 50,000.00	
Unissued	39,005.00	
Issued and Outstanding	\$ 10,995.00	
Total Capital Stock Issued and Outstanding..	\$120,945.00	
Deficit	51,040.53	69,904.47
		<u>\$113,643.67</u>

Admitted May 11, 1948, T.C.U.S.

Mr. Maiden: If the Court please, I would like to offer in evidence a similar statement made by Mr. Moore, of the financial condition of the Petitioner as of December 31, 1940, dated February 4, 1941, with the request, since we have some similar emphasis on this document, that we be allowed to substitute a copy, and leave out the emphasis.

Mr. Walker: If the Court please, I have agreed with [186] counsel with respect to these documents, that I would raise no objection to his introducing them, although they contain matters which I have not gone over on my direct examination with this witness.

(Testimony of Harry W. Moore.)

I have asked this witness concerning his audit report of Capital Service in connection with the Kolb Distributing, and the bakery, and Timm Aircraft. These documents contain also reference to the Central California Utility project. As to those references which are made, they were not covered on my direct examination, but I have agreed with counsel not to object on that ground to these documents being admitted as evidence.

However, this last document that was offered for evidence contains statements of this witness with reference to the value of Central California Utility project. I wish to make it clear that I have no objection to it going in evidence if I can have full freedom in quizzing the witness on the basis of that opinion and completely explore it, and not be blocked by objections counsel might otherwise raise.

Mr. Maiden: If the Court please, I am handing in these audit statements made by Mr. Moore. It is true they were made at later dates than the audit statement he referred to about the Inland Company. However, those audit statements of the Inland Land Company required was the auditing of the subsidiaries of that earlier period, and here were audit statements made by Mr. Moore in later years, and not getting into our crucial years, in which he treats light of the financial condition of two of the subsidiaries.

It is true, he does also mention Central California Utilities Corporation, but the Court must keep in

(Testimony of Harry W. Moore.)

mind that this whole new project was simply an outgrowth of this Inland Company, and I think it is admitted properly for all purposes under cross-examination of this witness.

I don't think I have gone beyond the scope of cross-examination, and Mr. Walker, of course, on redirect examination of this witness, can have his witness, and examine him with respect to anything that is in here, if he has any explanations to make.

Mr. Walker: I understand that to be the case, of course, your Honor, that I will be able to re-examine him, but the only thing about this report to which I object is the witness' statement of opinion, and that is sometimes a difficult thing to fully explore without counsel's objection.

The Court: If that is offered for the purpose of having it bear in this case as to the witness' opinion, certainly on redirect, counsel for Petitioner would have the right to question the witness on the opinions expressed.

Mr. Maiden: From this witness' explanation regarding expression of value, I am aware of that fact. That is perfectly true. [188]

The Court: Counsel for Respondent favors some limitation?

Mr. Maiden: Here is the situation, your Honor. It will develop in this case, and it is true, if I may explain, Mr. Moore is the employed accountant of Capital Service Incorporated, and he has represented Capital Service Incorporated in all of the

(Testimony of Harry W. Moore.)

proceedings. He is a prejudiced witness. He is bound by answers of Mr. Moore. I think if he got an opportunity, he would burn me up. I don't want to be bound by his answers, and I don't think I should be bound by his answers.

The Court: As I understand the situation, counsel for Respondent now seeks to enter into evidence a statement compiled by this witness, in which this witness has expressed an opinion. Now, if that is to go into evidence, certainly it is competent for opposing counsel to interrogate this witness about the matters, any matters or things stated in that report.

Mr. Maiden: I agree your Honor. He may do that on redirect, but he may not proceed to take this witness as my witness, and then cross-examine him. He must stay within the rules of direct evidence here, of the examination of your own witness is the point I was making, your Honor.

The Court: I think counsel for Respondent has laid down the bars as to the expression of opinion and judgment by the introduction of this in evidence. [189]

Mr. Maiden: Your Honor, I have no objection to Mr. Walker asking any competent question expressed in a competent manner from his own witness to explain anything he wants to in that document, but I don't want Mr. Moore to express in this case, as my witness, answers he may give to Mr. Walker that would be binding on me. That is the point I am making.

(Testimony of Harry W. Moore.)

The Court: I have stated to counsel, that counsel for the Petitioner may interrogate this witness as to any matters set forth in that report that counsel for Respondent is offering in evidence as to his expressions of value.

Mr. Maiden: Thank you, your Honor. That is perfectly all right.

The Court: Do we have an understanding about that, gentlemen?

Mr. Maiden: It is perfectly all right, except that I don't consider that Mr. Moore is my witness.

The Court: Well, he is not your witness, yet.

Mr. Maiden: Thank you, your Honor. I am sorry I made so much about this thing.

The Court: You have asked this witness to identify certain documents, and that is as far as you got.

Mr. Walker: Do I understand before we leave this particular subject, your Honor, that bars are down on questions regarding valuation. [190]

The Court: I am not going to lay down any broad general principles. I don't know, gentlemen. I am telling you that you have the right to interrogate this witness as to what his expressions of opinion in this document contain.

Mr. Maiden: I understand, your Honor.

The Court: It isn't throwing the thing wide open on expression of opinion in general.

Mr. Walker: As to this witness' opinion of the value of the project, as he stated in the report, I can quiz him——

(Testimony of Harry W. Moore.)

The Court: Proceed, gentlemen.

Mr. Maiden: I now offer in evidence this letter of February 4, 1941, from Mr. Moore to the petitioner stating the financial condition of the petitioner as of December 31, 1940, and ask for the privilege, since we have some emphasis on this document, of substituting a copy and leaving out the emphasis.

The Court: It will be received in evidence as Respondent's Exhibit L; leave given to withdraw the original and substituting a copy thereof omitting the emphasis indicated in the original.

(The document above-referred to was received in evidence and marked Respondent's Exhibit L.)

RESPONDENT'S EXHIBIT L

Thomas & Moore
Certified Public Accountants
215 West Seventh Street
Los Angeles, Calif.

February 4, 1941

Capital Service, Inc.,
510 South Spring Street,
Los Angeles, California.

Gentlemen—

We have made an audit of your books and records as of December 31, 1940, also checking all recorded

(Testimony of Harry W. Moore.)

cash receipts and cash disbursements. We submit herewith, supplementing our report dated July 1, 1940, covering your audit as of April 30, 1940, the following statement and comments, which in our opinion reflect your financial condition as of December 31, 1940—

Statement of Assets, Liabilities and Capital as of December 31, 1940.

Respectfully submitted,

THOMAS & MOORE,

Certified Public Accountants.

By /s/ HARRY W. MOORE.

Statement of Assets, Liabilities and Capital
as of December 31, 1940

ASSETS

Cash in Bank	\$	100.67
Investment in Central California Utilities Corporation—Note A—		
188,550 shares of stock—at cost.....	\$	1,300.00
Note Receivable	31,567.81	32,867.81
Investment in Bakeries Deal—Note B		39,048.08
Investment in Timm Aircraft Corporation—		
41,650 shares of stock—at cost.....		36,000.00
Miscellaneous Assets—		
Note Receivable—Peter J. Bressi.....	\$	59.00
Note Receivable—George Kent.....	129.03	
Stock, A. & W. Baking Company—		
20 shares—at cost	20.00	208.03
Other Assets—		
Commissions paid on sale of capital stock....	\$	6,597.00
Good Will and Management.....	10,995.00	17,592.00
		<u>\$125,816.59</u>

(Testimony of Harry W. Moore.)

LIABILITIES

Notes Payable—G. Brashears & Company	}	Note C	\$ 40,036.00
Accounts Payable—G. Brashears & Company			15,845.37
			<hr/>
			\$ 55,881.37

CAPITAL

Authorized—50,000 shares Class A Stock—			
Par Value \$10.00		\$500,000.00	
Unissued		390,050.00	
Issued and Outstanding		\$109,950.00	
<hr/>			
Authorized—50,000 shares Class B Stock—			
Par Value \$1.00		\$ 50,000.00	
Unissued		39,005.00	
<hr/>			
Issued and Outstanding		\$ 10,995.00	
<hr/>			
Total Capital Stock Issued and Outstanding....		\$120,945.00	
Deficit		51,009.78	69,935.22
			<hr/>
			\$125,816.59
			<hr/>

Note A—The investment in stock in the Central California Utilities Corporation is carried at cost, and the note receivable represents cash advances. The investment is of doubtful value. The only remaining asset appears to be a franchise for the distribution of gas held by Gas Fuel Service Company, a subsidiary.

Note B—Investment in Bakeries Deal—

The investment in the bakeries deal represents advances to and for the account of Kolb Distributing Company and A. & W. Baking Company. The A. & W. Baking Company is a corporation which was organized to take over the bakery operations formerly conducted by the Kolb Distributing Company. The latter retained only the trucks subject

(Testimony of Harry W. Moore.)

to the liabilities thereon. The principal assets of the Kolb Distributing Company and the A. & W. Baking Company consist of the equipment and trucks, together with the various routes in the distributing system. The ultimate value of the assets will depend upon the success of the project, which is contingent upon increasing the present volume of sales or in working out a consolidation with some other bakery.

Note C—The notes and accounts payable to G. Brashears & Company represent total advances to or for the account of Capital Service, Inc., or companies in which Capital Service, Inc., is interested. No interest has been paid to G. Brashears & Company, or accrued upon the obligation, G. Brashears & Company advising us that it is not their present intention to make any charges for interest.

Mr. Maiden: No further questions.

(Discussion off the record.) [191]

Redirect Examination

By Mr. Walker:

Q. Mr. Moore, in what you have identified as a copy of your report dated February 4, 1941, as being a statement of the assets and liabilities of Capital Stock as of December 31, 1940, you have stated, as in note A, that the investment of Capital Service in the stock of Central California Utilities is carried at cost, and the note receivable represents

(Testimony of Harry W. Moore.)

cash advances. You also state that that investment is of doubtful value. Can you explain what you mean by that?

A. Generally in accounting terms, an account receivable or a note receivable is either good, or it is doubtful, or it is bad.

Q. And what are the standards?

A. In the case of the Central California Utilities Corporation, we had made a previous audit as of April 30, 1940, and there had been no payments on the account between the date of April 30, 1940 and December 31, 1940—the account was in the same condition, I think, on the two dates—and there apparently had been no effort to collect; and in usual accounting terminology, I think, we merely show that the account is in doubt.

Q. Did you make any investigation as to this account?

A. We made inquiry. We found that the only remaining asset was the certificate from the State Railroad Commission—Certificate of [192] Public Convenience, or Public Necessity, whatever that term is, which was owned by the Gas Fuel Service Company. The Gas Fuel Service Company being the subsidiary of the Central California Utilities.

Q. You have already stated what you have found to be the assets and liabilities of the Inland Public Service Company in 1935. If you had stated an indebtedness of the thirty-two some odd thousand dollars that existed here as of December 31, 1935,

(Testimony of Harry W. Moore.)

would you have classified that as of doubtful value?

A. Will you read the question?

Mr. Maiden: I object to that as being a purely hypothetical question.

Mr. Walker: I believe we can qualify this witness as an expert. He has been a C.P.A. since 1922.

Mr. Maiden: I think the questions ought to be based on fact.

The Court: The witness has testified that he is a Certified Public Accountant, and the question is directed at the accounts from a professional accounting. You may proceed.

The Witness: Will you read the question?

(The question was read.)

The Witness: If this \$32,000.00 had been a liability of the Inland Public Service Company as of December 31, 1945?

Mr. Walker: 1935.

The Witness: I would have stated that it was of doubtful [193] value.

Mr. Walker: No further questions.

Recross-Examination

By Mr. Maiden:

Q. Mr. Moore, in making audits of books, every time you find an obligation owing to the corporation whose books you are auditing has not changed from one year to the next, do you always state that that asset is of doubtful value?

(Testimony of Harry W. Moore.)

A. No. If I may explain—If the corporation had a considerable amount of tangible assets, and it was evident that there would be no question about the payment, on the account, we would not classify it as a doubtful asset.

Q. So that in stating that it was an asset of doubtful value, then, you based that upon facts other than that there had been no change in the obligation from April 30 of 1940, to December 31, 1940, is that correct?

A. Yes. I think the note goes farther and says that the only remaining assets appears to be the certificate.

Q. Yes?

A. In other words, if the company had had a vast amount of tangible assets, you would look at it a whole lot different than you would, if the only assets of the company was an intangible asset.

Q. In stating that the investment was of doubtful value, you took into consideration, of course, the only [194] so-called asset, being the Certificate of Necessity?

A. That's right.

Mr. Maiden: I believe there are no further questions, your Honor.

The Court: You may stand aside.

(Witness excused.)

Whereupon,

G. BRASHEARS

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Walker:

Q. Will you state your name and address, please?

A. G. Brashears, 1544 Virginia Avenue.

Q. What is your present employment, Mr. Brashears?

A. Well, I am President of G. Brashears and Company—Several other occupations, as well.

Q. Are you the Director of any corporations?

A. Yes.

Q. What are they?

The Court: Would you mind speaking a little louder?

The Witness: Gladden Products Incorporated, Lincoln Foundry Corporation, Timm Aircraft Corporation, Capital Service, Lockheed Aircraft Corporation. [195]

By Mr. Walker:

Q. What is the business of G. Brashears and Company? A. Security business.

Q. How long has G. Brashears and Company been in the security business?

(Testimony of G. Brashears.)

A. Since '22. That is, with its predecessors. There have been consolidations, etc. It started in 1922.

Q. You have been President of the present company, or its predecessor since 1922?

A. Yes.

Q. You stated that you are a Director of Capital Service, Incorporated. Are you familiar with the formation of that company? A. Yes.

Q. Did you have anything to do with the formation? A. Yes.

Q. What did you have to do with it?

A. Well, I fathered it on matters of organizing properties, etc.

Q. Could you state whether you were one of the incorporators?

A. Technically, no. I think the record will show that.

Q. Do you know what the purpose of Capital Service Incorporated was when it was formed?

A. Yes. [196]

Q. What was that purpose?

A. The purpose of investing in deals that we thought might develop and work into profitable situations we could make a profit on.

Q. What led you to believe that such would justify the formation of a corporation?

A. Well, observations from our experience in the security business.

Q. What were some of those observations?

(Testimony of G. Brashears.)

A. You mean specifically or generally.

Q. Generally speaking. What did you have in mind?

A. Well, we had in mind—We had seen several deals that had needed a small amount of capital at times; we felt if they were supplied capital, they might work into profitable operations.

Q. Did you know of any such company that had been supplied with capital, and would get into operations?

A. Well, we went into one deal previous to that—G. Brashears and Company.

Q. And you formed Capital Service, you say, for the purpose of doing that as its business?

A. Yes. Specifically at that time, we were in contact with this Inland deal. We had some talks regarding it; and we had taken, I think, one step in loaning them money, or something of that kind. Also with Timm Aircraft. And we [197] had the formation of Capital Service Corporation so that we could loan small amounts of money.

Q. You were familiar with the Capital Service negotiations with Central California Utilities?

A. Yes, generally speaking.

Q. Did you know how much money was to be advanced by Capital Service? A. Yes.

Q. Did you know the purposes for which that money was to be spent?

A. Generally speaking.

(Testimony of G. Brashears.)

Q. Did you know what the prospects were of getting that advance back? A. No.

Q. Why did you make or authorize the advance of \$20,000.00?

A. Well, I don't know if I personally authorized it. It was done with the idea that the company had a valuable opportunity through its Certificate of Necessity and franchise to build up a situation that might be either financed with the public, or sold to somebody who might be interested in it after it had been somewhat rehabilitated.

Q. And the purpose was to put it in some such shape? A. That's right.

Q. Was there any intention by you of recouping your [198] \$20,000.00 advance from the operation of the company as it then existed?

Mr. Maiden: If the Court please, I object to it as leading.

The Court: Objection sustained.

Mr. Maiden: The question before that is leading. There has been several leading questions, but in an effort to save time, I am trying to hold my objections to a minimum.

By Mr. Walker:

Q. What were the business reasons of making the advance of \$20,000.00?

A. We thought we could put it in some shape to make a profit on it.

Mr. Maiden: That's always a reasonable business deal.

(Testimony of G. Brashears.)

The Witness: That's right.

By Mr. Walker:

Q. Did you advance any additional money after the \$20,000.00? A. Yes.

Q. And when was that?

A. I can't give you the dates. The books will show that.

Q. I believe that has been stipulated as part of the record. Were the additional advances made for the same purpose?

A. The same general purpose, yes. I think it was some [199] \$14,000.00.

Q. What state of mind did you have with reference to the return of that money?

Mr. Maiden: I object to that, if your Honor please.

The Court: Sustained as to form.

By Mr. Walker:

Q. Did you have any state of mind when the money was advanced with reference to its repayment? A. Yes.

Q. Was that state of mind—I think we better withdraw that last question and answer. How long, Mr. Brashears, did you feel that you had made a wise decision?

Mr. Maiden: If the Court please, I object to that as calling for a conclusion of the witness on an ultimate question of fact solely within the jurisdiction of this Court.

The Court: Sustained.

(Testimony of G. Brashears.)

By Mr. Walker:

Q. Well, you have stated, Mr. Brashears, that when you made the advance in 1936, and later, that you did so because you hoped to recoup a profit of it, is that correct?

A. That's right. We were in the business of making loans for the sake of business only.

Q. Did you ever change your mind as to whether you could make a profit out of it? A. Yes.

Q. When was that?

A. When we charged it off.

Mr. Maiden: What was that?

The Witness: When we charged it off.

By Mr. Walker:

Q. Why did you change your mind?

A. Because we had been unable to do anything with it.

Q. Why had you been unable to do anything with it?

A. Well, the war came along and things tightened up, and the opportunities for raising capital for such deals became almost impossible.

Q. What had you planned?

A. If we had been able to raise the capital, I doubt if we would have been able to get any material.

Q. Did you have any intention of putting up any more money of your own?

Mr. Maiden: If your Honor please, I object to

(Testimony of G. Brashears.)

the expression what his intentions were. I want him to tell what he did.

The Court: Sustained.

By Mr. Walker:

Q. Have you had occasion to examine the minute book of the Capital Service Company?

A. Yes.

Q. Do those minutes show any action taken by the Board [201] of Directors with reference to a decision regarding money being advanced to Central California Utilities?

A. You mean further money? No. I haven't been able to find it.

Q. And how recently have you examined those minutes?

A. I just went over it this morning.

Q. Is the minute book in the courtroom?

A. Yes.

Q. As a Director of Capital Service Incorporated, did you have occasion to consider whether additional money should be put into Central California Utility project?

A. Yes. It was considered over a period of years.

Q. Was it ever decided to put more money?

A. You mean after when?

Q. After '37.

A. When did we put the last money in?

Q. The last money was in 1937.

(Testimony of G. Brashears.)

A. We took it up numerous times. We weren't in a position to put the money in.

Q. Why weren't you?

A. We had several other deals, a couple of other deals that required, in order to keep them alive, much smaller amounts of money than would have been required to do a real job on Central California Utilities.

Q. What were these other projects? [202]

A. One of them was Timm Aircraft, and the other was the bakery project which started as Ful-Ton Truck.

Mr. Maiden: You are speaking now in your capacity as a Director and President of Petitioner, Capital Service Incorporated, is that right?

Mr. Walker: I believe the witness has stated he was a Director of Capital Service Incorporated, not the President.

Mr. Maiden: But you are not talking about what G. Brashears did too, are you?

Mr. Walker: The questions have related to Capital Service.

Mr. Maiden: All right.

By Mr. Walker:

Q. Do you know why that money was borrowed?

Mr. Maiden: Just answer yes or no.

The Witness: Yes.

By Mr. Walker:

Q. As a Director of Capital Service Incorporated, do you know what disposition was made

(Testimony of G. Brashears.)

of that money? A. The books would show it.

Q. You have heard Harry Moore testify this morning that the sums of money which he mentioned were borrowed by Capital Service Incorporated from G. Brashears and Company from 1937, all with the balances shown; can you state whether the proceeds of this loan from G. Brashears and Company were [203] spent in these projects that you mentioned? A. Yes, the majority of them.

Q. Can you state why such money was not spent on the Central California Utilities project?

A. In the first place, there wasn't enough to do anything with Central California Utilities. In the second place——

Q. Did you feel—Pardon me. I didn't mean to interrupt.

A. In the second place, the other deals were such that we would have lost them, we felt, if we wouldn't put in some money; and we didn't feel that we would lose the Certificate of Necessity on the Central California Utilities by awaiting such time as we could, either to dispose of it as a whole, or finance it in such a way as to do the job that was necessary.

Q. Why did you feel——

A. There was different sizes of money that was necessary between Central California Utilities and the other two deals.

Q. Why did you feel that the Central California Utilities would not be endangered——

(Testimony of G. Brashears.)

Mr. Maiden: If your Honor please, I object to that. The witness has just stated what he thought. I want facts.

The Court: Objection sustained.

By Mr. Walker:

Q. Did you have a reason for deciding that—I will [204] withdraw that question.

A. Do you want me to state the facts of the case?

Q. I want you to state the facts that you know as to why the decision was made to put the money borrowed from G. Brashears and Company into the Timm Aircraft and into the bakery, rather than into the Central California Utilities.

Mr. Maiden: G. Brashears? I thought you were talking about Capital Service.

Mr. Walker: The money borrowed from Capital Service from G. Brashears.

Mr. Maiden: I've got no objection. Go on, tell the story, Mr. Brashears. We've got to get through with this.

The Witness: Well the record will bear out our judgment; at the time, we were required to decide, times weren't so good and we had three principal deals. We had to decide which ones we could hold on to best for the least amount of money, and we felt that the Central California Utilities was principally dependent upon the Certificate of Necessity and franchise, and in order to substantiate the value, or a sale of the project, we felt that that was all

(Testimony of G. Brashears.)

we had to hang on to; and the others, if we hadn't put small amounts of money into, we would have lost entirely.

The other two deals have come out fairly well, and that is on the record. The Revenue Department has gone over all our books and records. [205]

By Mr. Walker:

Q. You have stated that you had hoped to either refinance this utility project or sell it.

Mr. Maiden: If the Court please, I don't know whether he testified to that or not. I object to what he hoped to do, and I want to know facts.

Mr. Walker: I think the state of a man's mind, if the Court please, is a fact.

Mr. Maiden: I know what his state of mind is today, but I don't know what his state of mind was back in 1939.

Mr. Walker: That is what we are getting at.

Mr. Maiden: The actions of this corporation will be shown by their official records. If you want to keep insisting on going into this, I am going to demand that you present your proper records which will show what actions were taken.

Mr. Walker: I believe the record before the Court already shows the dollars and cents that changed hands, and why. I think it is also very pertinent for the Court to know what the state of mind was of the man who made the decision in this matter. I think his state of mind is very definitely fact.

(Testimony of G. Brashears.)

The Court: May I suggest, counsel, a corporation speaks from its records, and that is the best evidence. The state of mind of an individual, even though he may be a Director here in connection with that corporation does not [206] reflect the corporation. I want to give counsel for the Petitioner full opportunity to present his case, but from a witness of this kind, who is not an expert witness as I understand it, the things to be elicited is what was done and why, if the witness knows.

If we can confine ourselves along that general line, we may save some time and stay within the rules of evidence.

By Mr. Walker:

Q. Mr. Brashears, I show you from the stipulation, Joint Exhibit 8-H, and show you the last two entries of that exhibit entitled, "Settlement of Shell Oil" and "Sale of pipe" and ask you if that is your handwriting? A. Yes.

Q. I point out, also to you, on the record, that the balance in the account receivable owing to Capital Service by Central California Utilities was charged off to profit and loss on December 31, 1942. Are you familiar with that charge off?

A. Yes.

Q. Could you say why that was done?

A. The Certificate of Necessity had been canceled by the Railroad Commission in October of 1942.

(Testimony of G. Brashears.)

Q. Did you have anything to do with the cancellation of the certificate?

A. The cancellation came from the Railroad Commission. [207] We had stated in a letter at some time previous that we could not—I think the letter is there. I think it will show.

Q. I show you Petitioner's Exhibit 37, and ask you if you have seen that before?

A. Yes. It is a copy——

Q. This is a copy of the letter to the Railroad Commission. Did you have anything to do with the writing of that letter?

A. Not the actual writing. I had to do with the decision that it should be written.

Q. And what did you have to do with that decision?

A. It was my recommendation they so advise the Commission.

Q. And why was that?

A. Because I didn't think we had any reasonable opportunity, any further reason to hang on to the Certificate of Necessity, and to finance the deal or sell it.

Q. What led you to that conclusion?

A. Times, general conditions, conditions of the Capital Service Company. The war came along as I have just stated. It was tough to do anything.

Q. Do you remember conferring about this matter with anyone else? A. Yes.

Q. Who did you confer with?

(Testimony of G. Brashears.)

A. I conferred with Mr. Price for one. Probably all the [208] other directors.

Mr. Maiden: Was that at an official meeting of the Board of Directors?

The Witness: We didn't always decide such things at official meetings. The majority of the Board was close together, and if we would come to a decision of the majority of the Board, we would proceed.

Mr. Maiden: Then, you would have minutes written up, wouldn't you?

The Witness: Sometimes. Sometimes.

Mr. Walker: I'll be through in just a minute, counsel.

By Mr. Walker:

Q. You stated that the Timm Aircraft was one of the projects which Capital Service had been interested in, is that correct? The Timm Aircraft, is that one of the projects? A. Yes.

Q. Did Capital Service own stock of Timm Aircraft? A. Yes.

Q. And had Capital Service loaned money to Trimm Aircraft? A. Yes.

Q. Do you know how Capital Service came out with the Timm Aircraft?

A. They made a little money. [209]

Q. How was that made? A. Sale of stock.

Q. Do you recall when that was?

A. Exactly no. The books would show.

Mr. Walker: No further questions.

(Testimony of G. Brashears.)

Cross-Examination

By Mr. Maiden:

Q. Mr. Brashears, am I pronouncing that name correct? A. Yes, that's right.

Q. I hate to mispronounce people's names. That's kind of a stumble for a country boy from Tennessee, I'll tell you, right now.

A. How long?

Q. Not long. Mr. Brashears, this Brashears and Company, would you give the Court some idea of the volume of business, the volume of investments, made by your company back in 1935?

A. I haven't that kind of memory. We have books and records. We can bring them up and show them to you. Your department has been over.

Q. Were the operations large or small?

A. Comparatively small.

Q. Comparatively small? A. Yes.

Q. It isn't considered to be a large securities and investment company? [210]

A. I shouldn't think so.

Q. Well, do you have any idea of it; just give us a rough idea of the volume of your financial transactions in 1940 and 1941?

A. I couldn't do that.

Q. You don't have the slightest idea?

A. I have some idea.

Q. Well, give us your best recollection?

A. I have a balance sheet here, I think, an earnings sheet.

(Testimony of G. Brashears.)

Q. That will be satisfactory.

A. Not of 1940. I can send for that. This is one of 1948. That isn't one of 1940. We will have to send up to the office to get it.

Mr. Maiden: I am going to get his best recollection.

By Mr. Maiden:

Q. Mr. Brashears, what connection did you have with this company in 1940 and 1941?

A. Which company?

Q. The G. Brashears Company?

A. I was Director and an officer.

Q. Director and an officer. What officer?

A. President.

Q. Now then, as President and Director of that corporation in 1940 and 1941, do you mean to tell this Court that you [211] don't have any recollection at all or any knowledge at all without looking at books and records as to the approximate volume of the financial transactions your company was in?

A. Not that I would care to state on the stand, no. When the actual facts are available. I have the balance sheet here.

Q. Well, that is for 1948. But you don't care to give this Court a statement with regard to the financial condition of the company in '40 and '41?

A. You mean the G. Brashears and Company?

Q. Yes.

A. No. Not without the records before me which are available. They are available.

(Testimony of G. Brashears.)

Q. Well, where are they?

A. They are at our office right up the street where we can get them in fifteen minutes. You want the facts, don't you?

Q. Well, I just want a rough approximation.

A. I wouldn't testify to amounts and details that far back with memory.

The Court: May I suggest that you haven't been asked amounts and dates.

The Witness: Yes.

The Court: The only question you have been asked is the general scope and extent of what the business was in a [212] general way. That is all the questions that is propounded to the witness.

The Witness: Well, your Honor, our business is one that varies greatly, and I prefer not to testify the amount of business. I have a balance sheet here. I could have brought the profit and loss statement, which I didn't think would be necessary. Our entire records are available in fifteen minutes time.

The Court: I understand that; but that isn't the question in this case.

By Mr. Maiden:

Q. The balance sheet that you have there is 1948, I believe? A. That's right.

Q. Mr. Brashears, I believe that in the reorganization of Inland Land Company, that the G. Brashears Company received promotional stock in the California Utilities Corporation, the debtor corporation; they are partners in this case, is that right?

(Testimony of G. Brashears.)

A. I don't believe so. I think it was Capital Service.

Q. Do you mean to tell me, G. Brashears did not own any promotional stock in California Utilities Corporation?

A. I don't believe so. G. Brashears and Company?

Q. Yes.

A. I don't believe so. It was Capital Service.

The Court: This is Capital Service.

The Witness: Capital Service had. We are not talking about G. Brashears and Company.

By Mr. Maiden:

Q. Well, didn't G. Brashears and Company have some interest in Capital Service? A. Yes.

Q. What was that interest?

A. When? Now or then?

Q. Then.

A. It owned all of the common stock, the B stock, so classified, of Capital Service Company. It owns now——

Q. I don't care about now.

A. Well, let me try to answer this, will you?

Q. All right.

A. It owns now a trifle better than 50 per cent of the A, and it owns something less than that—What date are you talking about?

Q. I want to know back in '35, '36, '37, '38 and '39.

(Testimony of G. Brashears.)

A. I would say that all I know we owned at that time was the B stock, and 100 per cent of the B stock was controlled by the company.

Q. Was that promotional stock? A. Yes.

Q. And you hadn't paid anything for it? [214]

A. Not directly. We paid something in the way of services and expenses.

Q. In organizing, is that right?

A. That's right.

Q. So that all of the money that was advanced to the California Utilities Corporation came from Capital Service Incorporated, is that right?

A. Directly, yes, but some of it was supplied through G. Brashears and Company loan.

Q. Now, and G. Brashears and Company didn't have any of this money directly in this project?

A. No. It made loans to Capital Service.

Q. Now, I believe this record shows that G. Brashears and Company never directly invested any money in the California Utilities Corporation, isn't that correct?

A. I don't think so, no. I think at the beginning, my memory is at the beginning, G. Brashears and Company put a small amount of money in while Capital Service was being organized.

Q. But Capital Service repaid you that money?

A. That's right.

Mr. Maiden: I believe that's all.

The Court: Anything further from this witness?

Mr. Walker: Nothing from Petitioner.

The Court: You may stand aside.

(Witness excused.) [215]

Mr. Walker: If the Court please, the Petitioner has just recently found it desirable to produce another witness which is in the courtroom now, but we haven't really had an opportunity to confer with him, and I would like to suggest that with the Court's leave, we have a short time to do so prior to putting him on. It won't take long. Will it be agreeable to the Court to put our witness on at 1:30 this afternoon?

The Court: Off the record.

(Discussion off the record.)

The Court: We will take a short recess.

(Short recess taken.)

The Court: Call your next witness.

Mr. Walker: Mr. Wood, who has entered his appearance for Petitioner will interrogate the next witness.

Whereupon,

ROY M. BAUER

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Wood:

Q. Will you state your name and address, please?

(Testimony of Roy M. Bauer.)

A. Roy M. Bauer, 810 South Flower Street, Los Angeles.

Q. Who are your employers now, Mr. Bauer?

A. I work for three companies. The Southern California Gas Company. Southern Counties Gas Company. Pacific Lighting Corporation. All at that address.

Q. And your title, please?

A. Presently, I am gas supply supervisor.

Q. Will you describe your education and experience prior to coming with your present employers?

A. I graduated in 1920 from the University of California at Berkeley. Shortly thereafter, I worked in the Southern County Gas and Oil Fields for a period of time. I then returned to the university to take post-graduate work in natural gas and petroleum engineering.

I then became associated with the engineering staff of the California Railroad Commission, which has since become the Public Utilities Commission of California.

During my period, for approximately three years and a half, I had to do with service investigations, rate matters, valuation matters, checking into new areas of distribution, new areas of supply and consolidation of statistics.

Q. Of what? A. Natural gas entirely.

Q. Would you describe the duties that you have, and have had in your present association with your employers?

(Testimony of Roy M. Bauer.)

A. Since September 1931, I have worked for the three corporations mentioned. I originally had charge of all gas [217] dispatching operations. My work has been enlarged considerably in recent years to that. Not only gas dispatching operations, gas supply operations, watching the development in all areas of California for new sources of supply. Make forecasts, and investigating of new market areas. Testifying for the Public Utilities Commission in various cases, franchise cases. Cases such as were held last year in the investigation of production utilization of natural gas. California Case 45991, before the Public Utilities Commission.

I have made some reports on underground storage, and testified before the Federal District Court of Southern California about a year-and-a-half ago in one condemnation case.

I testified before the Federal Power Commission relative to bring natural gas to California.

Prior to 1931, I was with the Southern California Gas Company, and several predecessor companies.

In one year, I held the title of Rate and Appraisal Engineer. I also testified in those earlier years a number of times in rate litigations and valuation litigations.

Q. In connection with those duties, did you have occasion to appraise and value for prospective profit purposes, franchises in the State of California, for the transportation of natural gas?

(Testimony of Roy M. Bauer.)

A. Yes, I investigated several cases. In fact, off-hand, [218] I can recall I was complaint witness in three or four franchise cases. There was one at Corcoran some years ago. There was another one located at Newhall. And the most recent one last year was at Riverside.

Q. Have you been employed by the company in connection with the obtaining of these certificates of convenience and necessity to the transportation of natural gas in California, and the maintenance of those as to the wisdom of abandoning those certificates?

A. As I said, I was interested in several cases in helping obtain franchises for the company, and made investigations in that area which would justify the installation of pipe lines and pertinent facilities to supply customers.

As far as abandoning was concerned, I can't recall that we have abandoned any in recent years.

Some years ago, we had occasion to look at a long pipe line that was serving customers, and there was lack of gas, and service was ultimately abandoned.

Q. Are you familiar with the transportation of natural gas in the San Joaquin Valley, especially Kings County and Fresno County, and the sources of gas supply of the companies that distribute it? Would you answer yes or no? A. Yes.

Q. What experience have you had to gain that familiarity?

A. Practically ever since I came to the company,

(Testimony of Roy M. Bauer.)

as I [219] testified, I have been in charge of gas dispatching operations, and in recent years, with the complexities of supplies and transportation of various areas in California, I have been more closely connected with that.

Every day, in fact, I followed operations in all the focal areas in Southern California, and issued the necessary instructions and procedures to see that all customers are supplied with gas at all times.

Q. In that area?

A. Also in that area. The Southern California Companies supply up to Fresno.

Q. I would like to ask you a hypothetical question, assuming certain facts. Assume that on January 1, 1942, that a corporation is the holder of a certificate of convenience and necessity from the State of California to obtain and distribute natural gas in Kings and Fresno County, California; and assume that the corporation has no employees, it has no physical assets or cash. It has a small debt, under \$10,000.00. It has no office. It does, however, have the possibility of raising funds or either through of public financing or private financing; and assuming also for purposes of the question, that it has a source of gas supply at prices and at quantities that would be profitable to resell. And assume that there are customers, potential supply customers in that area. Have you an opinion as to the monetary value of that certificate of [220] convenience and necessity?

(Testimony of Roy M. Bauer.)

Mr. Maiden: Just a moment, if the Court please, a hypothetical question should be based upon facts in the record. Now the counsel for Petitioner in two specific instances, I think, had stepped beyond the record. One is, he has asked him to assume they had a gas supply as of January 1, 1942, is that right?

Mr. Wood: That's right.

Mr. Maiden: The record in this case shows that this company had no gas supply from 1937 on. That has been the testimony of a witness. He has also asked him to assume that they had hope as of January 1, 1942, of obtaining financing—Was it financing?

Mr. Wood: Financing.

Mr. Maiden: Obtaining financing.

Mr. Wood: Raising money.

Mr. Maiden: Raising money.

Mr. Wood: And "possibility" not "hopes."

Mr. Maiden: And possibilities of raising money. I think this record shows, if the Court please, that I think it is the clear evidence in the case that any possibility, alleged possibility, that this company may have had for obtaining finances, had expired as of December 31, 1941. And I submit that the hypothetical question should be corrected so as to properly state the record in that connection, before asking [221] the witness his opinion.

The Court: The objection will be overruled. The weight to be given the witness' testimony in a case

(Testimony of Roy M. Bauer.)

of this kind will depend entirely upon the assumed facts in the question, being a matter of record.

Mr. Maiden: Thank you, your Honor.

The Court: And that will be measured, of course, by the facts of record when it comes to a determination of the weight to be given this witness' answer. You may answer.

The Witness: Yes, I have an opinion.

By Mr. Wood:

Q. First of all, an opinion as to the monetary value. Will you state your opinion as to the monetary value?

A. I am unable to give you an actual dollars and cents value without knowing the facts of the case, it depending upon whether the operations are large or relatively small. It depends whether the operations show large profit, or whether they show less than the customary 6 per cent which is generally allowed public utilities corporations by the Commission in this State. It definitely has a potential value.

Q. Assuming those same facts, have you an opinion as to the value monetary or otherwise of the certificate of convenience and necessity at January 1, 1942.

Mr. Maiden: I would like to know what other fact he has assumed here. I just want to know where I am with regard to [222] the questions and answers.

Mr. Wood: Assuming the same facts that I gave at the beginning.

(Testimony of Roy M. Bauer.)

Mr. Maiden: And I want to know what additional facts you would have to assume. I believe you stated that you would have to know something.

Mr. Wood: As to the monetary value.

Mr. Maiden: What are the facts?

The Witness: May I have the question read?

(The question was read.)

The Witness: In my opinion it would have value because a certificate of public convenience and necessity is a prerequisite to the lawful operation of a public utility company. The Commission in this State wouldn't permit you to serve an area without a certificate, and the Commission has said on several occasions also——

Mr. Maiden: Your Honor, that is a matter of law, and I object to it.

The Court: The answer as he gave it is not responsive to the case.

(The question was read.)

Mr. Maiden: Your Honor, I think the witness ought to explain what he thinks, by otherwise, that is too broad and general.

The Court: Could not that be a matter for cross-examination? [223]

Mr. Maiden: Yes, it would, your Honor. I withdraw the objection.

The Court: The answer called for by that question is yes or no.

(Testimony of Roy M. Bauer.)

By Mr. Wood:

Q. The answer is yes or no. A. Yes.

Q. I repeat. I have already asked this same question. Would you state your opinion?

A. My opinion is that a company having a certificate of public convenience and necessity does have a potential value there if the facts as you have stated them are correct.

The Court: The question propounded to the witness was, what is that value.

Mr. Wood: It has a value monetary or otherwise.

The Court: He has answered that?

Mr. Wood: He has answered it has a value, potential value.

By Mr. Wood:

Q. Would you explain what you mean by potential value?

A. As I said previously, before a corporation can provide service in any area, they must have a certificate of public convenience and necessity. If two corporations were attempting to supply a certain area, and one had the franchise [224] and the supply as you have indicated, obviously they would be the ones that would take over the distribution of gas. Under those conditions, in my opinion, the certificate does have value.

(Discussion off the record.)

(The question was read.)

(Discussion off the record.)

(Testimony of Roy M. Bauer.)

The Court: Very well. On the record.

Mr. Wood: If your Honor please. I would like very much. I don't quite understand.

The Court: You will proceed in your own way.

By Mr. Wood:

Q. Take the same set of facts that existed January 1, 1942, and altering one fact as to the source of gas supply, and assuming that during the year 1942, the source of gas supply, that is any source or sources of gas of this company are diminished to the point that it is either impossible to obtain gas, or possible to obtain it only at prohibitive prices. Assuming that change of conditions during the year 1942. Have you an opinion as to the value of that certificate, as to the value and its potential value? Yes or no. A. Yes.

Q. Would you as an expert based on those facts, state your opinion as to the value or potential value of that certificate? [225]

(The question was read.)

The Witness: If there is little or no gas supply——

The Court: The question is just to state your opinion as to value. That is the question you are to answer.

Mr. Wood: I would like to withdraw that question, if your Honor please. I will start out first and ask this of the witness.

By Mr. Wood:

(Testimony of Roy M. Bauer.)

Q. Has this certificate a value, or potential value? Answer yes or no.

Mr. Maiden: I want to know when?

Mr. Wood: This is after the change of conditions in 1942, in this hypothetical set of facts. One condition being changed that the source of gas supply is infeasible and impossible to get and no longer economical, that is during the year 1942, after this change.

Mr. Maiden: In other words, you are asking him to assume that they had gas supply up to January 1, 1942, and then after January 1, 1942, you are asking him to assume that they had no gas supply, is that right?

Mr. Wood: Yes. Not quite as flatly as that, but that is the substance of it. It was either not available or not economical.

The Court: Gentlemen, let's proceed.

By Mr. Wood:

Q. Has it a value? [226]

A. No, I do not think so.

Q. Has it a potential value?

A. No, I do not think so.

Q. What is the basis of your opinion that it has no value or potential value?

A. The condition that you stated, namely that there is no supply available under any conditions, and without a supply of any kind, obviously a corporation could not function.

(Testimony of Roy M. Bauer.)

Q. The question was not under any conditions. It was either cut off or a tightening of the supply to the degree that it was no longer economical to obtain the supply either through high price or Government restriction. That is, the supply practically disappeared as a practical matter.

A. Well, if there was no supply, it would have in my opinion, no value. If there was a very small supply under the conditions with which it would be uneconomical to operate, it would have perhaps a very small value.

The Court: It would have a value?

The Witness: It would have a very small value.

The Court: For commercial purposes, is that what you mean to say?

The Witness: That's right.

The Court: Little or no value under those conditions.

By Mr. Wood:

Q. You stated that you are familiar with the distribution [227] of natural gas by commercial companies in Kings and Fresno County and the San Joaquin Valley in general. You are familiar with the sources of supply in that area, of the natural gas that is being distributed. Did you have that same familiarity at the beginning, as to conditions at the beginning of 1942?

A. Yes. I have been thoroughly conversant with that area for at least fifteen years.

Q. Have you ever heard of the Gas Fuel Service Company?

(Testimony of Roy M. Bauer.)

A. Yes, I did hear of them some years ago.

Q. Are you familiar with the location of the company and the nature of its operations?

A. Only generally.

Q. Would you describe the conditions in the San Joaquin Valley in general, and Kings and Fresno County in particular, as to the ability of a commercial gas company to obtain a source of supply, coming into the valley, and not having the source of supply before that?

Mr. Maiden: Your Honor, I think he ought to confine it to this Petitioner. We don't care what some other company might have done.

The Court: The objection is sustained. The question is directed to bringing a source of gas in that can be brought in any place into any community.

By Mr. Wood:

Q. Would the Gas Fuel Service Company be able to obtain [228] gas at commercial prices and in commercial quantities for distribution in Kings and San Joaquin County at the beginning of 1942; would it have such sources of supply?

Mr. Maiden: If your Honor please, I don't know that the witness has testified that he knows anything about the operations of Capital Service Company.

The Court: If the witness knows of his own knowledge.

(Testimony of Roy M. Bauer.)

The Witness: I can state that the gas companies in actual operations at that time had all the sources of supply——

The Court: Just a moment. Read the question please.

(The question was read.)

Mr. Maiden: I object to that, your Honor, because this witness hasn't shown that he knows anything about the Gas Fuel and Service Company as of January 1, 1942, and obviously one company might be able to get gas whereas another company might not be able to get gas, such as the company we have here.

The Court: If the witness knows of his own knowledge as to the particular company, it is competent testimony, otherwise not.

The Witness: I have no direct knowledge of the Gas Fuel Service Company as of that particular date.

The Court: Very well.

By Mr. Wood:

Q. On January 1, 1942, were there sources of gas supply for distribution in Kings and Fresno County for commercial [229] companies?

A. There were.

Q. Were there also sources for companies that had not been in operation, or about to go into operation?

Mr. Maiden: Your Honor, I object to that as being entirely too speculative.

(Testimony of Roy M. Bauer.)

The Court: Objection sustained.

By Mr. Wood:

Q. First of all, were there any changes during the year 1942, in the sources of gas supply available for distribution by companies in Fresno and Kings County? . A. Yes, there were.

Q. Would you describe those changes?

A. The first major repressuring in California started in 1942 at Kettleman Hill oil fields and increased rapidly so that by December, as I recall, about ninety million cubic feet daily were returned to the underground structures.

Q. If I may interrupt, how does Kettleman Hills tie into Fresno and Kings County? What connection does it have?

A. Kettleman Hills is largely in Kings County and is the major oil and gas field in the upper end of the San Joaquin Valley. This took gas away from current buyers for distribution, and naturally reduced materially the gas available to gas companies use of this major source of supply.

As far as utilization of gas is concerned, the [230] major operators at that time were called upon to produce all the oil that it was possible to produce in order to take care of the mounting demands of war industries, and more particularly, the increased demands of the armed forces. That required the gas companies to avail themselves of every foot of commercial gas production to which they could con-

(Testimony of Roy M. Bauer.)

nect their facilities in order to meet this increased market demand, which continued through the war period.

Q. How much of this took place in the year 1942; how much of this change?

A. I can't recall definitely without referring to charts, but Pearl Harbor occurred in December, 1941, and it was within a short period that industry started to increase; so I would say that during the year 1942, the effect of the war effort was very noticeable in the fuel demands in California.

Q. I would like to ask one more hypothetical question. Assuming the same set of facts as in the first question. Do you recall those facts, or would you rather that I go over them?

A. I believe I recall them.

Q. Assuming the conditions as to the source of gas supply would be as you have testified to here; have you an opinion as to the value of the certificate at the beginning of 1942, and at the end of 1942, after this change has taken place? Answer yes or no.

A. Yes, I have an opinion. [231]

Q. Would there be a change in the value? Answer yes or no.

A. Yes, there would.

Q. What would that change be in your opinion as an expert?

A. It would be a material reduction in value under the conditions that you set forth.

Q. Would you explain what you mean by a material reduction in value?

(Testimony of Roy M. Bauer.)

A. I can't place a monetary value on it specifically. As I said previously, one would have to know the exact circumstances under which the corporation operated. But at the beginning of the year with a gas supply in prospect, and customers in prospect, and a franchise to supply those customers, in my opinion, the franchise does have some value. On the other hand, if there is no assurance or little assurance or the supply is uneconomical, it has little or no value.

Q. It has little or no value, you say?

A. That is my opinion.

Q. Have you any opinion as to whether at the end of 1942, it would be worthless for all practical purposes? Yes or no.

Mr. Maiden: Your Honor, I object to that as leading.

The Court: Objection sustained. [232]

By Mr. Wood:

Q. Would you explain what you mean by little or no value?

The Court: Hasn't the witness been over that? I don't want to take anything away that counsel has, but it seems to me we are getting no place in this examination of this witness as an expert. If you have anything specific and definite, go ahead and proceed.

By Mr. Walker:

Q. May I ask the witness one or two questions? Mr. Bauer, assume the set of hypothetical facts

(Testimony of Roy M. Bauer.)

which were stated at the outset being the facts with reference to corporation A, and assume the same facts as having been stated with respect to corporation B, except that as to corporation B there was no certificate of convenience and necessity, can you state whether your opinion of value would differ as between corporation A and corporation B?

A. Yes, it would.

Q. Which corporation, in your opinion, would have the greater value?

A. The corporation having the franchise certificate, which I understood was the A.

Q. In your experience in the gas field, and in your experience in connection with the certificate of convenience and necessity, can you tell the Court what your experience has [233] been with reference to the granting of those certificates to a corporation seeking it in an area where a certificate is already outstanding?

Mr. Maiden: Your Honor, I think that involves a matter for the Utilities Commission, and not for this witness. It is purely speculative.

The Court: This witness hasn't shown any expert knowledge in this particular line. Is there anything further gentlemen?

Mr. Walker: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: How long do you expect to take with cross-examination?

Mr. Maiden: Your Honor, I believe I can do it in thirty minutes.

The Court: Has counsel for Petitioner any further testimony?

Mr. Walker: None at all, your Honor.

The Court: We'll suspend until 1:30.

(Whereupon at 12:00 o'clock noon, a recess was taken until 1:30 p.m. of the same day.)

Afternoon Session

1:30 P.M.

The Court: You may proceed.

Whereupon,

ROY M. BAUER,

called as a witness for and on behalf of the Petitioner, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Maiden:

Q. Mr. Bauer, I believe you stated that at one time you served with the Railroad Commission which is now the Public Utilities Commission of California? A. That is right.

Q. I believe you stated that you have been with your present company since 1931.

A. In the capacity of gas supervisor. I have been with predecessor gas companies now incor-

(Testimony of Roy M. Bauer.)

porated into Southern California Gas Company since 1924.

Q. Then your service with the Commission was prior to—would be prior to 1931?

A. Yes. It was the period 1921, '22, '23 and '24.

Q. Now, you have been asked to express an opinion on the basis of some assumed facts. I want to ask you first, when were you first contacted by counsel in this case with respect to your testimony today? [235]

A. This morning.

Q. This morning? A. Yes, sir.

Q. Prior to the discussion that you had with your counsel before you went on the stand did you have any personal knowledge of the operations of the Capital Service, Inc.—I mean, of the Central California Utilities Corporation, the Kettleman-Lakeview Oil Company or the Gas Fuel Oil Company from 1936 up to January 1, 1942?

A. I had knowledge of the operations generally of the Gas Fuel Service Company, and there was also some drilling concern—I believe you mentioned one—that had certain operations in the Dudley Rich Field, which I had knowledge of.

Q. Was that knowledge gleaned from observation, going out there and seeing them drill and asking them who was drilling?

A. Mostly from contacts through our field people. I did travel through the territory once.

Q. You did travel through the territory?

(Testimony of Roy M. Bauer.)

A. Yes.

Q. How much pipe line and equipment and how many customers, if you know, did the Gas Fuel Service Company operate in Fresno County from the period 1936 up to January 1, 1942?

A. I can't recall offhand. It was a relatively small operation.

Q. But you do have knowledge of the fact that they did [236] operate pipe lines in Fresno County?

A. It is either Fresno or Kings. In the general area of Stratford, the town of Stratford.

Q. The town of Stratford? A. Yes.

Q. But you don't know whether they were actually operating their certificate of necessity in both the Counties of Fresno and Kings?

A. I can't recall from memory, no.

Q. Now, Mr. Bauer, you stated that a certificate of necessity was essential to a company such as we have here, that they couldn't operate without it. I will ask you if a certificate of necessity would be issued to a corporation to operate in a particular county without the corporation first having a franchise from the county. A. That is correct.

Q. In other words, they would first have to have a franchise before the Commission would issue a certificate of necessity? A. That is right.

Q. Now, I believe you were given another hypothetical question which wasn't based upon any facts in the case, as I understand, and that is: That assume on January 1, 1942 that company A had a

(Testimony of Roy M. Bauer.)

certificate of necessity to operate in a particular territory; that company B didn't have a certificate of necessity; [237] which one of those companies could operate or—do you recall that specific question? I think I have forgotten some of the details.

A. Yes, I do.

Q. Will you state it, if you recall it?

A. As I recall the question, it was which of two companies, A or B, could operate and supply the public with gas; one having a certificate and the other not having a certificate, and it was my opinion that the company A having the franchise and certificate was in a position to service the public in preference to the other company.

Q. Well now, let me ask you this question: Suppose too, company A had the certificate and was not an operating company, it was an inactive company; suppose that it didn't have any pipe lines or equipment of any kind; suppose that it had had that certificate of necessity for a—well, say at least seven or eight years; suppose that they didn't have and couldn't obtain sufficient finances to put in the pipe line equipment necessary to serve the customer; and suppose that they had no gas supply—which it could obtain.

Now, I am asking you on the other hand, assume that company B which did not have a certificate of necessity, but had the finances to equip a gas line sufficient to render the service; suppose that they did have gas available to them; and suppose this

(Testimony of Roy M. Bauer.)

company B applied to the Railroad Commissioner to revoke [238] the certificate of necessity of company A and grant them the certificate of necessity. Now, in your opinion, what would be the outcome?

A. If I were company A I would immediately proceed to acquire rights for gas, assuming that company B had gas available.

Q. Well, I know, but my question was that assuming company A couldn't get any gas.

A. Well, if they couldn't get any gas under any circumstances, obviously they wouldn't be in a position to supply the market.

Q. And the certificate of necessity would be granted to company B that could demonstrate its ability to give effect to the certificate of necessity? Isn't that right?

A. The second company would first have to have the franchise before they could apply for a certificate of convenience and necessity.

Q. Now then, assume they did have a franchise.

A. Well, under your hypothetical case, if company A had absolutely no possibility of getting gas, then there is a good possibility that company B would be given the leading position.

Q. The purpose of issuing those certificates of necessity is to have them utilized, isn't that right?

A. Yes. It is the exercise of rights that a company obtained from the public bodies like a county or municipality. [239]

(Testimony of Roy M. Bauer.)

Q. And the Commission wouldn't permit a company to hold one of those certificates out against all the world if the company failed to utilize the certificate, would it?

A. There might be a time limitation there. There is several possibilities that you would have to explore to give an exact answer. I would have to know the exact conditions under which you propounded your question.

Q. A certificate of necessity is issued to a company premised upon the proposition that that company is able and capable of utilizing that certificate of necessity, isn't that right?

A. That is the general premise, yes.

Q. The Railroad Commission—Public Utilities Commission would not issue a certificate of necessity to a company that didn't demonstrate that they could and would utilize that certificate. Isn't that right? I mean, just give the devil his dues.

A. That is correct. If there is no possibility in the future of obtaining any supplies.

Q. Now then, let's assume that as of January 31, 1941, that the holder of this certificate, the Gas Fuel Oil Company, did not have a gas supply and the probabilities of it getting a gas supply were practically negligible; assume that if it could have gotten a gas supply, but as of December 31, 1942 it could not obtain sufficient finances with which to utilize [240] the gas supply, that is, to put in operation the gas pipe line that they had authority

(Testimony of Roy M. Bauer.)

to operate; in that situation what would be your opinion as to the value of the certificate of necessity as of December 31, 1941?

A. You stated two dates. The first time you said December, 1942 and now you say December 31, 1941.

Q. Well, I meant December 31, 1941 to start with. I meant to have the same dates, you see.

A. I see. In my opinion it would have little or no value. That is the same question that was propounded by opposing counsel.

Q. Now, assuming that to be the case as of December 31, 1940, your answer would be the same?

A. Yes, upon the assumptions that you have stated.

Q. Now, assuming that that was true every year back until December 31, 1939, then your same opinion would prevail as of December 31, 1939?

A. Yes, with the understanding that there was no future possibility at any time of getting any gas to run the business.

Q. That is right.

Now, when you say "possibility" would you say just an iota of a possibility, just a scintilla of possibility would change your opinion any?

A. Yes, if there was the least possibility of getting gas there it would. [241]

Q. You mean just an infinitesimal possibility?

A. No, I wouldn't say that. Let's get down to facts. If there was a possibility of getting sufficient

(Testimony of Roy M. Bauer.)

gas to take care of the firm service that was required for the customers that were to be connected with the systems, then you would say, "Yes."

Q. Well, when you speak of the word, "possibility" do you mean substantial possibility, that is, a possibility based upon fact rather than hope in the mind of an individual?

A. Both, because in this oil and gas game in California there is always hope if you are within a certain general geographical area.

Q. But a hope and a reality or possibility might be two different things. Isn't that right?

A. Yes, that is right.

Q. Just because I hope I may be a millionaire don't mean that I will ever be a millionaire, does it?

A. Not necessarily.

Q. Now then, I believe you stated in answer to the hypothetical question put to you that before you could express any value—I mean, any opinion of monetary value or any other kind of value, as I understood, that you would have to know something about the operations of this company; whether it had been making a profit or whether it had been making losses. Isn't that true? [242]

A. Yes, that is right. I was referring to monetary value.

Q. Now, of course, you don't know what the profits or expenses of this company had been up to January 1, 1942, do you?

A. No, I had no opportunity of examining the records.

(Testimony of Roy M. Bauer.)

Q. Now, Mr. Bauer, have you had an opportunity to read the certificate of necessity that was granted this Gas Fuel Company?

A. No, I have not.

Q. You don't know what is in it?

A. No, I can't recall.

Q. Have you examined the franchises issued to this company from Kings and Fresno Counties?

A. I can't recall I have.

Q. Now, I want to ask you this question: This is just a heart-to-heart question on a fact so far as you may know it by reason of having dealt with the Railroad Commission, and I assume you have had dealings before, it is my belief, as a witness in certain cases. Let's say that a corporation——

Mr. Walker: May I interject at this point? If this witness is to be cross-examined on his knowledge of the functions of the Railroad Commission, that there will be no objection to my redirect examination also with this connection to the Railroad Commission. We have qualified him as a gas [243] expert, not as a student of the administrative procedures of the Commission. So if counsel wishes to get into that phase of it, I would like an opportunity to reexamine that phase.

Mr. Maiden: Well, I appreciate counsel's objection, and I don't care to push that point any further.

Mr. Walker: There is already one question in the record on that phase.

(Testimony of Roy M. Bauer.)

Mr. Maiden: Now, when you spoke about the value of a certificate of necessity owned by a corporation, was that based upon that company actually utilizing and operating that certificate of necessity?

The Witness: Yes.

Mr. Maiden: I believe that is all, if the Court please.

Mr. Walker: Just three questions, your Honor.

Redirect Examination

By Mr. Walker:

Q. Counsel has referred to the hypothetical question posed to you regarding corporations A and B, and he has asked you as to whether the certificate which A had would be supplanted by a certificate in favor of B if B had the gas supply and the money to lay the pipe. I will ask you then, assuming that A had the certificate to start with, if that certificate would be revoked without a hearing on the merits of their respective positions? [244]

A. No, a public hearing would be held under those conditions.

Mr. Maiden: Oh, I stipulate that.

By Mr. Walker:

Q. You have also stated on cross-examination that from 1939 onward the certificate would have had no value unless there had been a gas supply. I believe that is the general tenure of the examination. I would like to ask you if you have the same

(Testimony of Roy M. Bauer.)

opinion back as far as 1935 assuming—I think perhaps the best thing is to refer to the question that was asked.

Mr. Maiden: That will take a lot of time if you are going to find that question.

By Mr. Walker:

Q. If the corporation which has the certificate had no gas at the end of 1939 and you were pinned down to the scintilla of a possibility of it getting gas, you stated that there was substantially no value to the certificate or the company which held it. I will ask you to devote your attention to that same question, but taking the dates back to the end of 1935, and ask you hypothetically if a corporation which held a certificate and had no supply of gas, and nothing but the certificate, if the value at that date would be any different from the value you testified to as of 1939.

A. No, if there was no possibility of obtaining a supply.

Q. Do you know of the relative possibilities between [245] 1936 and the end of 1941 of the gas supply in Kings and Fresno Counties?

A. My recollection is that some additional fields were being developed in the northern end of Fresno County about that time, and Dudley Rich was gradually tapering in deliverability towards the end of the period you mentioned.

Q. Was gradually doing what?

A. Tapering in deliverability.

(Testimony of Roy M. Bauer.)

By Mr. Wood:

Q. In counsel's last question he asked you, in your answer to the original hypothetical question regarding the value of a certificate of necessity, if your opinion was based on the company operating it? That is a little vague. When you answered the question about the value of the certificate of necessity, was it necessary that there be operations at that time, or did you have in mind operations then or including prospective operations in the future, that is, the operating of it includes the possibility of future operation as well as present operation? I don't know if I make myself clear, except the question counsel asked, the last question on cross-examination, I felt was ambiguous in the respect that your question hinged upon the company operating under the certificate of necessity, and I asked, when you answered the question, did your answer depend upon the actual operation at that time, or did it also include the possibility of operating in the future if there [246] was a prospect of that future?

Mr. Maiden: If your Honor please, I think he ought to first ask this witness whether or not he understood my question. Now, he says that it is ambiguous, but I stated the question and he readily responded. Now, if the question wasn't ambiguous to him, I don't understand this question. I think it is objectionable.

(Testimony of Roy M. Bauer.)

The Court: Well, let's see what it develops. I can't tell at this time.

The Witness: I understood government counsel to say that the company was not operating and had no possibility or an infinitesimal possibility of supply.

By Mr. Wood:

Q. That isn't the question. His question, as I understand it, was with your regard to your answers to the first hypothetical questions and the assumed facts in those hypothetical questions were—there was no operation under the certificate of necessity at the time, and I wanted to bring out that your answer was based upon one of those assumed facts, that there was no operation under that certificate at the time that you placed the value on that certificate.

A. Yes, that is the way I understood it.

Mr. Maiden: Now, you are going to have to explain it to me, Mr. Witness, because I don't understand the question and I don't understand your answer. Now, here was the question [247] I asked you: I asked you whether your value that you spoke of as attaching to a certificate of necessity owned by a corporation was based upon the assumption that that corporation was active, an operating corporation utilizing the certificate. Now, what is your answer to that?

The Witness: Your Honor, I seem to be confused. There are apparently two sets of questions,

(Testimony of Roy M. Bauer.)

and I can't differentiate between one and the other. My original understanding to one of the questions was——

Mr. Maiden: Just a minute. Mr. Reporter, will you read my last question to him? I want that question answered.

(The record was read.)

The Witness: This is that hypothetical question you set forth?

Mr. Maiden: Yes. To which you answered, "Yes."

The Witness: If the corporation was an operating corporation that would be one thing, and if your question is directed solely at the premise that we start with an operating corporation, then the franchise value was considered on the basis of such an operating corporation.

Mr. Maiden: That is what you had in mind, then, when you spoke about the value of the certificate owned by a corporation, that that certificate had value in the operation by the corporation of the certificate?

The Witness: Yes, and I also stated if there was a good [248] possibility of getting a source of supply in the immediate future, that it would become operative, the answer was also yes.

Mr. Maiden: Now, I want you—were you still in your cross-examination?

Mr. Walker: No further questions on redirect.

(Testimony of Roy M. Bauer.)

Mr. Maiden: Just one question, your Honor, and I will be through, on my honor.

Recross-Examination

By Mr. Maiden:

Q. Mr. Bauer, you were asked by counsel on redirect examination to assume that the state of facts that I gave you as being the situation at the end of each of the years from 1939 to the end of 1942, the counsel asked you then whether under those same facts back as of December 31, 1935, your answer would be the same, and I believe you stated, "Yes." Do you recall that?

A. Yes, I recall that.

Q. Now, I want you, though, to assume this additional situation which actually existed in this case back at the end of December 31, 1935, and that is, that the company not only had a franchise, not only a certificate of necessity; but it likewise had actual pipe line laid and customers served by those pipe lines and knew that there were several gas wells available to them by lease or purchase which had been good [249] producing wells but had been cemented up. Then, would it be your opinion, in that change of the stated facts——

Mr. Walker: If the Court please, if we are trying to bring in the actual facts that the record shows, I think that we should also show that there was no gas being distributed at that time.

(Testimony of Roy M. Bauer.)

Mr. Maiden: There wasn't at the end of December 31, 1935. No gas was actually being distributed, but they had these wells that had simply been capped up. They were available to them.

Mr. Walker: The witness is an expert, if the Court please, and just capped up means something from being cemented in.

Mr. Maiden: All right, cemented in, and as of December 31, 1935 the corporation thought that they could bore out that concrete and attach up and have gas. Now, would that change your answer?

The Witness: Well, under those conditions, I would assume there was a possibility of gas production and the franchise would then have value.

Mr. Maiden: That is all.

Mr. Walker: Petitioner rests, your Honor.

The Court: For my information, let me ask this witness a question. I am not clear on it.

Will a certificate of convenience and necessity be issued [250] to any concern that has a source of supply of gas and prospective customers?

The Witness: Yes, generally speaking.

The Court: Well, what do you mean by "generally speaking"?

The Witness: Well, it would have to be economically feasible.

The Court: Well, I understand that. I said that had a source of supply of gas and had prospective customers.

(Testimony of Roy M. Bauer.)

The Witness: If it were not in competition with another concern, it would undoubtedly be granted the certificate.

The Court: Now, is it true that the certificate of necessity gives exclusive privileges in a given territory to distribute gasoline?

The Witness: Yes. That is the California Commission's procedure.

The Court: Under your California law that is an exclusive right and may be a monopoly?

The Witness: Yes, it is a regulated monopoly.

The Court: How may a certificate of convenience and necessity terminate? By non-use?

The Witness: By non-use and elimination of all possibility of future supply.

The Court: By "non-use", for how long? [251]

The Witness: That I am unable to say. Conditions change from time to time.

The Court: Then, as I understand from your testimony that if gas was not being distributed in conformity with the certificate of convenience and necessity issued in this case, that the right of the holder of that certificate of convenience and necessity would terminate?

The Witness: They would terminate after a considerable period of time.

The Court: Well now, I am not an expert and you are. What do you mean by, "a considerable period of time." I don't know your California law. You say that you are familiar with it.

(Testimony of Roy M. Bauer.)

The Witness: I also stated that I would have to know the exact conditions of a particular case, but let's assume that a company had a certificate and exercised it and then the supply disappeared. The company could continue to hold that certificate if no other company attempted to serve in that particular area and in the interim they had attempted to, by due diligence, to acquire an additional supply.

The Court: All right. Now, if another company that has a supply of gasoline and prospective customers attempts to serve in that community, that is what I am trying to get, at least.

The Witness: Then another public hearing is held and [252] the merits of the two are decided by the Public Utilities Commission.

The Court: And the certificate of convenience and necessity that had been issued prior thereto might be held a nullity and cancelled?

The Witness: That is correct, if this first company had no possibility of source of supply.

The Court: That is all I have.

(Witness excused.)

Mr. Maiden: Now, if the Court please, I have some exhibits to put in evidence. I would first like to offer in evidence, and Petitioner's counsel has agreed that he will have no objection——

The Court: All right, just make your offer.

Mr. Maiden: This is a certificate from the State of California, Office of the Secretary of State, cer-

tifying that these three corporations' charter was cancelled on January 3, 1940, and that they have not yet been revived.

The Court: Very well, it is offered in evidence.

Mr. Walker: No objection.

The Court: It will be received as Respondent's Exhibit M.

(The document above-referred to was received in evidence and marked Respondent's Exhibit M.)

RESPONDENT'S EXHIBIT M

[Letterhead]

State of California

Office of the

Secretary of State

Frank M. Jordan

Secretary of State

I, Frank M. Jordan, Secretary of State of the State of California, hereby certify:

That Central California Utilities Corporation, Gas Fuel Service Company and Kettleman Lakeview Oil and Gas Co., Ltd. became incorporated under the laws of this State by filing their Articles of Incorporation in this office on the dates respectively set forth: August 3, 1936, January 3, 1933, and April 6, 1931.

I further certify that the said "Central California

Utilities Corporation" was authorized to exercise all its corporate powers, rights and privileges at all times from and after August 3, 1936, to January 6, 1940;

That the said "Gas Fuel Service Company" was authorized to exercise its corporate powers, rights and privileges at all times from and after January 3, 1933, to March 6, 1935, whereupon it suffered a suspension of such powers, rights and privileges for nonpayment of franchise taxes due this State; that the said corporation became reinstated on May 17, 1935, and remained in good standing until January 6, 1940;

That the said "Kettleman Lakeview Oil and Gas Co., Ltd." was authorized to exercise its corporate powers, rights and privileges from and after April 6, 1931, to March 16, 1933, from and after July 6, 1933, to November 2, 1934, and from and after November 21, 1934, to January 6, 1940—there being a suspension of its corporate powers, rights and privileges for nonpayment of franchise taxes on March 16, 1933 (reinstatement on July 6, 1933), November 2, 1934 (reinstatement on November 21, 1934) and January 6, 1940.

I further certify that on the 6th day of January, 1940, pursuant to the provisions of Section 32 of the Bank and Corporation Franchise Tax Act of this State, a report was transmitted to my office by the Franchise Tax Commissioner wherein appeared the names of domestic and foreign corporations which

had failed to pay, prior to the time prescribed by said Section 32, the tax or any portion or installment thereof, or penalties and interest thereon, as computed and levied under said act.

I further certify that on said 6th day of January, 1940, a record was duly made in my office relative to the delinquency of each corporation affected by the said report, and that included in such recordation were the names "Central California Utilities Corporation," "Gas Fuel Service Company," and "Kettleman Lakeview Oil and Gas Co., Ltd."

I further certify that the suspension of the corporate powers, rights and privileges of each of the said corporations became effective upon such recordation on the 6th day of January, 1940, as provided by the aforesaid Section 32, and

That according to the records of my office the suspensions of the corporate powers, rights and privileges of each and all of the corporations herein referred to have not been lifted; that none of the said corporations has been reinstated since the 6th day of January, 1940, and

That the annexed transcript is a full, true and correct copy of the said January 6, 1940, suspension report except that copies of all pages not listing the names of the said corporations have been excluded.

In Witness Whereof, I hereunto set my hand and

affix the Great Seal of the State of California this
4th day of May, 1948.

/s/ FRANK M. JORDAN,

Secretary of State.

[The Great Seal of the State of California.]

By /s/ CHAS. J. HAGERTY,

Deputy.

[Letterhead]

State of California

Office of

Franchise Tax Commissioner

Sacramento

January 6, 1940.

Honorable Frank C. Jordan

Secretary of State

State Building

Sacramento, California

Dear Sir:

Pursuant to law, we are transmitting herewith a list of corporations whose corporate powers, rights, and privileges to do business in the State of California are to be suspended for failure to pay the taxes duly levied by the proper agency of the State of California.

We are also transmitting those foreign corporations doing business in the State of California who have failed to pay the taxes duly levied by the law to the State of California and their right to do business is also suspended.

The above transmission is in consonance with Chapter 13, Statutes of 1929, Section 32.

Yours very truly,

CHAS. J. McCOLGAN,

Franchise Tax Commissioner.

By /s/ J. P. HOLLINGS.

JPH:eg

Enclosure

[Filed in the office of Secretary of State, Calif., June 6, 1940.]

174327	Calor Holding Corporation.....	California
159653	Cal State Oil Corp.....	California
177274	Caltor Petroleum Corporation.....	California
175185	Cambria Mercury Company Ltd.....	California
170251	Campbell and Danielson Inc.....	California
177488	Campeet Oil Corp.....	California
175219	Camp Far West Mining Co.....	Nevada
103955	C & H Grocery Co.....	California
176846	Candid Cameras, Incorporated.....	California
176609	Canneries of California Inc.....	California
136684	Canton Lands Ltd.....	California
175721	Canyon-Falls Ranch-Klub Ltd.....	Nevada
131316	Capelis Safety Aeroplane Corporation Limited	California
175006	Capital Cigar and Liquor Company Inc.....	California
166332	The Carbofrezer Company of America.....	California
174446	Carbon Canyon Oil Corporation.....	California
163037	Cardinal Oil and Gas Company.....	California
174851	Cardinal Wines and Liquors, Store No. 1 Inc.....	California
175211	Cardinal Wines and Liquors, Store No. 2 Inc.....	California
177267	Career Builders of America.....	California
106571	Carly Realty Co. Ltd.....	California
175591	Carnall Trucks	California

143414	Carnation Gold Mining Company Ltd.....	Nevada
118138	Carob Growers Products Company.....	California
160444	Caro-Lyn Petroleum Company	California
139218	Carr Oil Corporation.....	California
174524	Carter Wright Inc.	California
176959	Casa Manana	California
114953	Castle Building Co. A Corporation.....	California
150005	Cedar Investments, Inc.	Nevada
177820	Cedar Lodge Sanatorium.....	California
83003	Central Bank of Imperial Valley.....	California
175607	Central California Oil Co.....	California
167972	Central California Utilities Corporation...	California
109650	Central Hardware Company.....	California
177698	Central Milk Sales Agency.....	California
172711	Central Valley Oil Co.....	California
172833	Central Valley Oil Development Co.....	California
161879	Central Wholesale Co.	California
113421	Century Finance Corporation.....	California
171945	Century Furniture Inc.....	California
177491	Chain & Kahn.....	California
176925	Champion Molybdenum Corporation.....	California
177186	Chaney and Hill Inc.....	California
158775	Chapman-Meehan Casket Co. Inc.....	California
151667	Charcoal & Industrial Carbons Inc.....	California
161305	Charles Art Hairdresser Inc.....	California
142049	Cherokee Drift Mining Company.....	California
171789	Chidago Mines Inc.....	California
167723	Chief Pontiac Co. Inc.....	California
172706	The Children's Gild.....	California
146805	Chiquita Development Corporation.....	California
64807	C. H. Jenkins Company.....	California
177048	Christensen, Inc.	California
176005	Cigar Box Restaurant Inc.....	California
174038	Cineo Incorporated	California
177778	Cinema Clothes Ltd.	California
174432	Cine-Modes of Hollywood Inc.....	California
174057	Cino Realty Company.....	California
177464	Circle-K Ranch Inc.....	California
151610	Circus Markets Inc.....	California
147753	Citizens Insurance Agency Inc.....	California
175489	Citizens National Life Insurance Company	California

177513	Citizens Prosperity Association, a non-profit corporation.....	California
175488	Citizens Sales Corporation.....	California
132935	✓Foreign Auto Rentals Inc.....	California
175910	✓Forest Lake Ranch, Inc.	California
175182	✓Fortuna Mines, Inc.	Nevada
94854	✓Fortuna Oil Company.....	California
177732	✓49'ers, Inc.	California
116868	✓Foss Heating and Engineering Company...	California
163637	✓Foss Medicine Company, The.....	California
119161	✓Foster Holding Company.....	California
169702	✓Roster Motors, Inc.....	California
47361	✓Foster-Quinn Company	California
175174	✓4 HB Ranch, Inc.....	California
170263	✓Foursquare Press, Ltd., The.....	California
176882	✓Fourth and F. Corporation.....	California
152624	✓Fox Blocks Company.....	California
161459	✓Fox Specialty Company, a Corporation...	California
167221	✓F. P. Grogan and Co.....	California
102213	✓Fram Draying Co.....	California
166597	✓Francisco Pontiac Company.....	California
167614	✓Frankel-Kay-Diamond, Inc.	California
175072	✓Frank Feliciano Beverage Company, Inc..	California
171701	✓Frank Groves Company.....	California
107142	✓Frank L. Meline Incorporated.....	California
175895	✓Frank M. Flynn & Co. Inc.....	California
129971	✓Frank T. Hickey Company.....	California
168169	✓Fred B. Thompson Corporation.....	California
174068	✓Frederick Palmer Academy of Creative Writing, Inc.	California
145943	✓Fred H. Lundblade Co.....	California
176546	✓Fredna, Inc.	California
128894	✓Fredroy Realty Company.....	California
174852	✓Fred Siemon, Inc.	California
125077	✓Freeman Holding Corporation.....	California
158100	✓French American Wine Co.....	California
73530	✓French Bakeries Company.....	California
168151	✓Friant Products Co.....	California
177613	✓Fridman's, Inc.	California
175848	✓Frigid-O-Matic Corporation, The.....	California
174700	✓Front Page Copy Holder Co.....	California
175350	✓Frosti-Server Corporation	California

164827	✓Fuerst Gold and Refining Co. Inc.....	California
49435	✓Fullerton Oil Company.....	Arizona
169929	✓Ful-Ton Truck Company.....	California
177083	✓Fur Research Bureau of North America...	California
177892	✓Ga-Ga Inn	California
147875	✓G. & G. Air Lines Company, Ltd.....	Arizona
170993	✓G & M Manufacturing Company.....	California
161562	✓Gangplank Corporation, The.....	California
174111	✓Ganz Corporation.....	California
127822	✓Garden City Meat Co.....	California
167950	✓Gardner Realty & Investment Company...	California
176060	✓Garner Bros. Oil Co.....	California
175679	✓Garry Oil Company	California
177402	✓Garutso Lens, Inc.....	California
174008	✓Gasav Incorporated	California
152202	✓Gas Fuel Service Company.....	California
172674	✓Gasoil Production, Co.	California
173959	✓Gel-Sten Duplicator Company.....	California
162480	✓G. E. Mathews Co., Inc.....	California
167318	✓General Appliances, Inc.....	California
132631	Kalif Corporation	Delaware
165596	K & G Sports Togs Company.....	California
177854	Kanin Building Company, Inc.....	California
175162	Karl's Place, Inc.....	California
176376	Karp-Stucker Incorporated	California
99903	Kellas Estate Company.....	California
174249	Kelly's 5 & 10, Inc.....	California
169272	Kelly-Smith Company	California
121500	Kelsey Mining Co., Inc.....	California
176223	Kenber Oil Company	California
154540	Kened Co.	California
176525	Kennett Construction, Club.....	California
177323	Kent Lines, Inc., The.....	California
176660	Kerben Oil Company.....	California
174875	Kern County Citizens' Association.....	California
39461	Kern Delta Realty Co.....	California
166691	Kern Leasing Company.....	California
171563	Kern Service, Inc.....	California
117466	Kesterson Lumber Company.....	California
144157	Kettleman Lakeview Oil and Gas Co. Ltd...	California
174953	Key Oil Company.....	California

150981	Kilkea Investment Corporation.....	California
177120	Kimberly Oil Corporation.....	California
164957	King-McCray Oil Company.....	California
89367	Kiyomura Farm Company.....	California
160272	Klamath Pine Lumber Company.....	Oregon
176088	K. L. C. Milling Co.....	California
66968	Klein Simpson Fruit Company.....	California
167577	Klingtite Products Company.....	California
174718	K M T Investment Corporation.....	California
166087	Knit and Sportwear Shop.....	California
98910	Knowles Corporation, The.....	California
157787	Knox Bros.	California
112243	Koch Builders Inc.....	California
110672	Koff Holding Co.....	California
141525	K. O. Laboratories Ltd.....	California
150498	Koshaba & Co., of Oakland.....	California
140110	K. P. Lowell & Company Ltd.....	California
172305	Kraco Mfg. Corp., The.....	California
170617	Kroesen Mfg. Co.....	California
173997	La Conga, Inc.	California
176133	Lady Lee Cosmetic Co.....	California
150845	Lafayette Petroleum Corporation.....	California
174657	Laff & Zeidler, Inc.....	California
167419	Laird, Inc.	California
176273	Lake Canyon Mutual Water Company.....	California
173998	Lake Chemical Company.....	California
177838	Lake County Water Company.....	California
176305	Lake Mead Hotel and Resort Corporation..	California
174064	Lake View Development Company.....	California
174681	La Mirada Pottery.....	California
104069	La Mode Shoes Inc.....	California
173915	Landes Packing Company, Inc.....	California
168901	L & L Mining Company Inc.....	California
175867	Langlois Oil Re-Refiner Sales Co.....	California
174497	Lang-Schwartz, Inc.	California
146808	Lantz Corporation Ltd.	California
175430	La Posea Distributing Co.....	California
65108	La Roca Monte Rancho.....	California

Admitted May 6, 1948. T. C. U. S.

Mr. Maiden: Now, if the Court please, I would like [253] to offer in evidence the original income tax returns of the Kettleman-Lakeview Oil and Gas Company, Ltd., for 1936, 1938, 1939 and 1940. Unfortunately I wasn't able to get the 1937 return. I offer those documents as Respondent's exhibits next in order.

The Court: Any objection?

Mr. Walker: No objection.

The Court: They will be received in evidence as Respondent's Exhibits N, O, P, and Q.

(The documents above-referred to were received in evidence and marked Respondent's Exhibits N, O, P and Q.)

Mr. Maiden: Next, if the Court please, I should like to offer the original income tax—Corporation Income And Excess-Profits Tax returns of the Central California Utilities Corporation, which is the debtor in this case, for the calendar years 1936 through 1940, inclusive, as Respondent's next exhibits in order.

The Court: How many are there?

Mr. Maiden: There are five, your Honor.

The Court: They will be received in evidence as Respondent's Exhibits R, S, T, U and V.

(The documents above-referred to were received in evidence and marked Respondent's Exhibits R, S, T, U and V.)

Mr. Maiden: Next, if the Court please, I should like to offer in evidence as Respondent's exhibits

next in order the [254] Corporation Income And Excess-Profits Tax Returns of Capital Service, Inc., for the years 1936 through the taxable year 1943, both inclusive, and that would be eight separate documents.

The Court: They will be received in evidence as Respondent's Exhibits W, X, Y, Z, AA, BB, CC and DD.

(The documents above-referred to were received in evidence and marked Respondent's Exhibits W, X, Y, Z, AA, BB, CC and DD.)

Mr. Maiden: Now, if it please the Court, Respondent has not been able to obtain in time enough to offer here and now in evidence the Corporation Income and Excess-Profits Tax Returns of the other subsidiary, that is, Gas Fuel Service Company. They have been moving in Washington, your Honor, from one warehouse to another, and with the agreement of counsel for Petitioner, which I believe has already been given, I should like the opportunity to have the Court grant either of the parties the right to introduce those returns in evidence in Washington by stipulation to be filed with the Court.

Mr. Walker: It is agreeable to the Petitioner, your Honor.

Mr. Maiden: It simply completes the picture.

The Court: By agreement of counsel, the income tax returns of the Gas Fuel Service Company from 1936 to 1940, both inclusive, may be received in evidence, and it is understood that those returns

may be supplied for the files later. Is that agreeable? [255]

Mr. Walker: That is correct, your Honor.

Mr. Maiden: Yes.

The Court: And that those returns shall be marked Exhibits EE, FF, GG, HH and II.

(The documents above-referred to were marked Respondent's Exhibits EE, FF, GG, HH and II by reference and were reserved.)

The Court: Is that right, gentlemen?

Mr. Walker: I believe I lost track somewhere, your Honor. On the Capital Service returns, I believe we have them from 1936 through 1943. Is that right, counsel?

Mr. Maiden: We had for Capital Service from 1936 through 1943.

Mr. Walker: That is eight instead of seven, your Honor.

Mr. Maiden: That is my fault. I told your Honor there were seven documents there and there is really eight, so we do have our exhibits bawled up as they now stand.

The Court: Well, I have them in order as you gave them to me so they will come out right.

Are you gentlemen willing to have the record show what the sequence is?

Mr. Maiden: Yes.

Mr. Walker: Let the record show the correct sequence.

The Court: Is that all the returns you expect to offer?

Mr. Maiden: Yes, sir. [256]

The Court: How about leave to withdraw to substitute?

Mr. Maiden: Yes, sir, I was just fixing to come to that. I would like to have permission to substitute photostats of these returns in lieu of the originals and the returns that are to be supplied in Washington.

I would like to have the permission, which, of course, will be with counsel for the Petitioner to simply send to the Court certified copies of those rather than send the original and then have to withdraw them, because I will have the photostats made here and Mr. Walker can compare the originals and the photostats.

The Court: Leave given Respondent to substitute photostatic copies of the various income tax returns referred to. I think that takes them all in.

Mr. Maiden: Now, if the Court please, there is one other thing. I put in an exhibit here which is a certificate from the Secretary of State, and I haven't given counsel for the petitioner a copy. I would like to withdraw that exhibit now and have a copy made of it and turned over to counsel for Petitioner, and then I will return the original before the Court leaves.

The Court: Is that agreeable?

Mr. Walker: It is agreeable to the Petitioner.

The Court: Leave given Respondent to withdraw the [257] exhibit referred to for the purpose of making a copy thereof for counsel for Petitioner.

Mr. Walker: I believe it is Exhibit M.

The Court: Is that Exhibit M?

Mr. Maiden: Yes, sir, Exhibit M.

The Court: Very well, gentlemen. Anything further?

Mr. Maiden: That is all for the Respondent.

The Court: Anything further for Petitioner?

Mr. Walker: Petitioner rests, your Honor.

The Court: How about your briefs, gentlemen?

Mr. Walker: It is the pleasure of the Court as far as the Petitioner is concerned.

The Court: Do you want concurrent briefs or consecutive briefs?

Mr. Maiden: It is immaterial with me, if the Court please.

The Court: Concurrent briefs to be filed on or before 45 days—is that sufficient?

Mr. Walker: 45 days is ample for Petitioner.

The Court: 45 days is June the 21st. Concurrent briefs to be filed on or before June 21st, 1948. Reply briefs are to be filed on or before—do you want 30 days for that?

Mr. Maiden: 30 days.

Mr. Walker: 30 days.

The Court: July the 21st. Is that satisfactory, gentlemen? [258]

Mr. Maiden: That is satisfactory.

Mr. Walker: That is agreeable.

The Court: Very well, gentlemen. Thank you.

(Whereupon, at 2:20 o'clock p.m., an adjournment was taken until 3:05 o'clock p.m., Tuesday, May 11, 1948.) [259]

The Court: You may proceed.

Mr. Maiden: Judge Arnold, I would like to indulge just one second of your time, if I may, in the Capital Service, Inc., and state to you that due to technical difficulties in getting copies of photostats of various of the exhibits before the Court leaves here, we would like to ask that the Court employ the somewhat unusual practice of allowing the Respondent to withdraw and hold all of the exhibits in the Capital Service, Inc., case for the purpose of preparing our briefs, and Respondent will assume full responsibility and will return the exhibits to the Court after the briefs have been filed.

The Court: Have you consulted with counsel for the Petitioner?

Mr. Maiden: Yes, sir, and he has authorized to make this statement to the Court.

The Court: It is satisfactory with him?

Mr. Maiden: It is entirely satisfactory.

The Court: It is satisfactory with the Court then.

Mr. Maiden: Thank you, your Honor.

The Court: If it is done by agreement, then the record may show that it is done by agreement.

Mr. Maiden: Yes. Thank you, your Honor.

(Whereupon at 3:10 o'clock p.m., Tuesday, May 11, 1948, the hearing in the above-entitled matter was closed.) [262]

[Title of Tax Court and Cause.]

MOTION FOR EXTENSION OF TIME FOR FILING OPENING AND REPLY BRIEFS

Comes Now the respondent, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and moves that the Court extend the time for filing the opening briefs of the respective parties in the above entitled proceeding, from June 21, 1948, to July 31, 1948, and thirty days thereafter for the filing of reply briefs, to-wit:

August 30, 1948.

The grounds for this motion are:

(1) Just prior to the conclusion of the hearing in the above entitled proceeding, the court granted permission to respondent, it being agreeable to counsel for petitioner, to put in evidence by stipulation to be filed with the Court at Washington, D. C., the income and excess profits tax returns of the Gas Fuel Service Company for the years 1936 through 1940. This corporation is one of the subsidiary corporations whose activities and operations bear directly upon the question of the stock and bad debt losses claimed by petitioner and disallowed by respondent in the statutory notice. These returns, to be later filed in evidence, as aforesaid, were ordered marked as though in evidence as respondent's Exhibits EE to II, inclusive (Tr. 256). Said returns,

though requisitioned from Washington, have not as yet arrived and it is extremely doubtful, in view of the difficulty in locating old returns, that they will be available to the parties, for such use as may be required in their opening briefs, before the middle of July 1948.

(2) With regard to the extension, prayed for herein, to July 31, 1948, instead of some earlier date in July, respondent would show to the Court that trial counsel's brief for respondent is required to be in Washington for review at least two weeks prior to the time for filing with the Court.

(3) A new calendar of the Tax Court will be held in Los Angeles commencing June 21st and trial counsel for respondent in this case has several cases to prepare for trial on that calendar and will thus be compelled to stay his preparation of the brief in this case until approximately July 5th, even if the requested returns should be received here before the present due date of the opening briefs, to wit: June 21, 1948. Therefore, respondent's counsel, in addition to the failure to receive the aforesaid returns, which are required for use in his opening brief, needs the full time herein requested in order to consider and adequately prepare his brief in the case after the receipt of said returns, and have it

transmitted to Washington for review at least two weeks prior to filing with the Court.

Wherefore, it is prayed that this motion be granted.

/s/ CHARLES OLIPHANT,

EAT

Chief Counsel,

Bureau of Internal
Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel.

E. C. CROUTER,

R. E. MAIDEN, JR.,

Special Attorneys,

Bureau of Internal Revenue.

No Objection:

CHARLES M. WALKER,

Counsel for Petitioner.

/s/ WILLIAM W. ARNOLD,

Judge.

Received and filed June 14, 1948 T.C.U.S.

Granted June 15, 1948 T.C.U.S.

Served June 16, 1948.

[Title of Tax Court and Cause.]

MOTION TO CORRECT TRANSCRIPT

Comes now petitioner, by its counsel of record, and moves that the transcript of record in this proceeding be corrected as follows:

Page 5 Line 1, which reads "1947 of an indebtedness owed by petitioner to a corporation" should read "1942 of an indebtedness owed to petitioner by a corporation."

Page 39 In line 16, date "1935" should be "1936."

Page 105 In line 6, date "1942" should be "1940."

Page 114 In line 1, date "1939" should be "1936."

Page 170 In line 14, the word "not" should be inserted after "It was."

Page 179 In line 11, word "Moore's" should be "Woodard's."

Page 198 In line 21, word "business" should be "public."

Page 205 In lines 9 and 10, the phrase "from Capital Service by G. Brashears" should be "by Capital Service from G. Brashears."

Page 208 In line 3, number "27" should be "37."

Page 223 In line 5, word "it" should be "you."

Page 223 In line 6, word "no" should be "to know."

Page 223 In line 15, word "with" should be "without."

Page 224 In line 8, word "no" should be "yes."

Page 230 In line 14, word "depression" should be "repressuring."

Page 256 In line 15, after the word "Honor" a new paragraph should be started as a statement by Mr. Maiden.

Wherefore, it is prayed that this motion be granted.

/s/ CHARLES M. WALKER,
Counsel for Petitioner.

July 27, 1948.

No Objection:

/s/ CHARLES OLIPHANT,

ECC

Counsel for Respondent.

/s/ WILLIAM W. ARNOLD,
Judge.

Received and filed Aug. 2, 1948 T.C.U.S.

Granted Aug. 2, 1948 T.C.U.S.

Served Aug. 4, 1948.

[Title of Tax Court and Cause.]

MEMORANDUM OF FINDINGS OF FACTS
AND OPINION

1. In 1936 and 1937 petitioner invested in stock of, and made loans to, Central California Utilities Corporation. On its consolidated return for 1942

petitioner claimed the stock investment and the indebtedness as deductions upon the ground of worthlessness, resulting in a net operating loss for 1942 and a net operating loss carry-over to 1943. Respondent determined that the debt and the stock investment became worthless prior to 1942 and denied the claimed 1942 net operating loss carry-over as a deduction for 1943. Held, the stock investment and the indebtedness became worthless prior to January 1, 1942, and petitioner is not entitled to deduct in 1943 a net operating loss carry-over from 1942.

2. In 1941 petitioner filed a separate return which showed a net operating loss. In 1943 petitioner and its subsidiary filed a consolidated return. None of the income reported on the 1943 consolidated return represented income of the petitioner. Held, petitioner is not entitled to carry over its 1941 net operating loss (a separate return year) and deduct it from 1943 consolidated income, a year in which it had no income.

Charles M. Walker, Esq., and James L. Wood, Esq., for the petitioner.

R. E. Maiden, Jr., Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

Arnold, Judge:

This case involves an income tax deficiency for the calendar year 1943 in the sum of \$7,358.10. The principal issue is whether petitioner is entitled to a net operating loss deduction in 1943, representing

a net operating loss carry-over from the calendar year 1942. In computing its net operating loss for 1942 petitioner deducted \$31,567.81 as an alleged bad debt of, and \$1,300 as an alleged loss on capital stock of, Central California Utilities Corporation. Respondent disallowed both deductions for 1942 and determined that petitioner had net income instead of a net operating loss carry-over for the latter year.

The other issue involved herein is whether petitioner can carry over a 1941 net operating loss of \$2,752.49, a year for which it filed a separate return, and deduct the loss in 1943, a year for which it filed a consolidated return.

From the oral testimony, the documentary evidence, and the partially stipulated facts we make the following

FINDINGS OF FACT

Petitioner is a California corporation, formed April 23, 1936. For the calendar years 1942 and 1943 it filed consolidated returns with the collector for the sixth district of California. Petitioner's subsidiary, A. & W. Baking Company (name changed to Danish Maid Bakery), joined in filing the consolidated returns.

For 1940 and 1941 petitioner and its subsidiary each filed an income tax return. In 1940 the subsidiary sustained a net operating loss of \$17,846.84; petitioner sustained a net operating loss of \$7,082.40 for the same year. In 1941 the subsidiary sustained a net operating loss of \$8,681.99; for the same year

petitioner sustained a net operating loss of \$2,752.49.

In the 1942 consolidated return the subsidiary had a net income of \$5,685.22, exclusive of a net operating loss deduction; petitioner reported a net operating loss of \$27,492.98 for 1942. In arriving at said loss petitioner deducted, upon the grounds of worthlessness: (1) an indebtedness of \$31,567.81 owed to it by Central California Utilities Corporation; and (2) \$1,300 representing the adjusted basis to it of 1,050 shares of stock of Central California Utilities Corporation. In the notice of deficiency herein respondent disallowed said deductions, totaling \$32,867.81, and determined that, with \$4,103.53 of deductions not claimed by petitioner but allowed by respondent, petitioner had an adjusted net income for 1942 of \$1,271.30, excluding net operating loss deductions.

None of the income reported on the 1943 consolidated return of petitioner and its subsidiary, in the amount of \$122,566.32, represented income of the petitioner. Adjustments by respondent for 1943 resulted in his determination that the consolidated net income adjusted for 1943 was \$25,196.55 instead of the net loss of \$23,012.20 reported on the consolidated return.

Central California Utilities Corporation, hereinafter referred to as Central, is a California Corporation, formed August 3, 1936, for the purpose of taking over the assets and liabilities of the Inland Public Service Company, hereinafter referred to as Inland. Continuously after some time in 1933,

and prior to the formation of Central in 1936, Inland owned all the issued and outstanding stock of Gas Fuel Service Company and Kettleman Lakeview Oil and Gas Co., Ltd., hereinafter referred to as Fuel and Kettleman, respectively. The primary function of Kettleman was to own producing wells and leases upon which such wells could be drilled, and to produce gas for sale. The primary purpose of Fuel was to buy gas from Kettleman and others and distribute it for sale to customers in Kings and Fresno Counties, California.

All of the issued and outstanding shares of Fuel and Kettleman were acquired by Central from Inland on or about September 5, 1936. At all times material hereto such shares were the sole assets owned by Central. The certificate of dissolution of Inland was filed with the California Secretary of State on March 10, 1937.

The early history of Fuel and Kettleman is partially revealed by Decision 26178 of the Railroad Commission of California, 38 C.R.C. 875. It appears therein that on January 23, 1933, Fuel asked the Commission for an order certifying that "public convenience and necessity require and will require the construction and operation of a natural gas transmission and distribution system for the service of natural gas to the agricultural power users in Fresno and Kings Counties and to exercise franchise rights which it contemplates acquiring from said counties." Three other companies resisted Fuel's application and a series of public hearings

were held by the Commission. The Commission's decision shows that in or about 1930 the organizers of Fuel owned approximately 1,500 acres of potential oil and gas lands in the Dudley Ridge area of Kings County; that these owners organized Kettleman for the development of their properties; that at the time of the *the* hearings (April and May 1933) three producing gas wells were on the properties, which witnesses estimated had a daily production of 20,000,000 cubic feet over a period of 20 years; that Fuel sold under contract to Pacific Gas and Electric Company 1,000,000 cubic feet of gas per day and small quantities of gas to others in the vicinity of the wells; that a survey of farmers of Kings and Fresno Counties, made to secure new outlets for its surplus gas production, indicated approximately 81 potential gas users who would secure an over-all saving of one-third to one-half of their present costs; that Fuel proposed to sell gas at 16 cents per 1,000 cubic feet in Kings County and at 17 cents per 1,000 cubic feet in Fresno County; that such rates were much lower than the rates of the opposing companies; that Fuel would be farmer owned, controlled and managed; and that the estimated cost of installing its proposed transmission and distribution lines was approximately \$680,861. The Commission granted Fuel's request and denied the requests of the resisting companies on July 21, 1933.

During May 1933, Kings and Fresno Counties each granted Fuel a franchise by ordinances, which

ordinances have never been repealed. Each franchise gave Fuel the non-exclusive right and privilege of using the County's streets, highways and alleys for the purpose of laying and maintaining a gas distribution line. Each franchise required work to commence thereunder within four months or the franchise "shall be declared forfeit." Each franchise required Fuel, or its assigns, to pay the County after the fifth year, two per cent of the gross annual receipts arising from the use of the franchise.

Under date of August 28, 1933 the Railroad Commission of the State of California granted Fuel a certificate of public convenience and necessity

* * * authorizing said utility to exercise the rights and privileges granted to it under Ordinance No. 151 of the County of Kings and Ordinance 290 of the County of Fresno, provided that the Commission may hereafter, by appropriate proceedings and orders, revoke or limit, as to territory not then served by Gas Fuel Service Company, or its successors in interest, the authority herein granted.

Following receipt of its certificate Fuel laid approximately 32 miles of gas line in Kings County. Thereafter it distributed gas procured from Kettleman to its customers. Early in 1935 Kettleman's only gas well blew out depriving Fuel of its gas supply. At the time Fuel lost its gas supply it was serving 10 or 12 customers.

By December 31, 1935 Inland was in financial difficulties. The combined book assets of Inland, Fuel and Kettleman as of that date showed current assets of \$1,800 and current liabilities in excess of \$60,000. Other assets of the companies were valued on their books at December 31, 1935 as follows: pipe lines, \$44,740.78; meters and regulators, \$354.56; general office equipment, \$463.98; miscellaneous equipment, \$407.55; lands and leases, \$901,112.50; and wells, \$200,000. Subsequently, and as of December 31, 1935, the book values of lands, leases and wells were eliminated by quit-claims and abandonment.

Late in 1935 or early in 1936 one of the promoters of Inland approached Ralph W. Moore seeking financial aid. Moore investigated Inland's condition and its prospects. His investigations convinced him that if Inland was reorganized and financed, it could become a very profitable operation. He found that Fresno and Kings Counties offered a practically unlimited market and that ample gas supplies appeared to be available within the area served by Fuel or in nearby areas. He located three gas wells that could be purchased or leased, which, on the basis of prior production, would provide an ample supply of gas. Two of the wells had been plugged with cement and one had been capped. Oil companies operating in or near Kings and Fresno Counties had had to shut down their gas wells because the Pacific Gas and Electric Company had ceased purchasing gas in the area, and Moore considered

the shut down wells as a further source of supply. He became quite optimistic over Fuel's prospects and succeeded in getting G. Brashears and Company, a Los Angeles firm engaged in selling securities, to put up \$20,000 to enable Inland to resume operations. G. Brashears and Company will hereinafter be referred to as Brashears.

Moore and Brashears agreed that, after Inland's business was restored to an operating basis, a new company (Central) would be organized to acquire Inland's assets and liabilities. The plan of reorganization contemplated that petitioner would advance the money needed for the Inland project. Such sums as Moore and Brashears advanced temporarily were repaid by the petitioner. Under the plan of reorganization Moore and Brashears were to have a 25 per cent interest and a 75 per cent interest, respectively, in the promotion stock, Inland stockholders were to receive stock of the new company (Central) and the remaining shares of the authorized issue were to be held for possible future sale to the public. The promotional stock represented over 50 per cent of the shares entitled to vote. Such stock had no cost basis in petitioner's hands. Since some time in 1936 petitioner has owned 1,050 shares of Central's capital stock, which has an adjusted cost basis of \$1,300.

After Central was organized and during 1936 petitioner made cash advances to or for its benefit totaling \$25,561.71, which included sums advanced by Moore and Brashears. Credits to this account dur-

ing 1936 totaled \$5,311.71, leaving a balance due petitioner on January 1, 1937 of \$20,250. During 1937 additional cash advances were made to Central by petitioner in the aggregate amount of \$14,000. Except for a \$50 advance on January 24, 1938, no further loans were made by petitioner to Central. The amount of Central's indebtedness to petitioner at January 31, 1938 was \$34,300. Credits to the account of \$1,900 on June 3, 1938 and \$832.19 on April 30, 1940 reduced the indebtedness to \$31,567.81, as of April 30, 1940, which was the amount finally charged off petitioner's books as a loss on December 31, 1942.

The funds advanced by petitioner to Central enabled its subsidiary, Fuel, to resume operation of its gas distributing system. A portion of the funds were used by Kettleman in an unsuccessful attempt to bring in its own gas wells, after which it obtained a supply of gas from a nearby capped gas well. This supply was ample for the limited number of customers then being served by Fuel. On or about May 29, 1937 this well was destroyed by geophysical tests conducted by Shell Oil Company in nearby territory. On or about July 21, 1937 Fuel contracted for a supply of gas from Southern California Gas Company. Fuel's contract with Southern was terminated on or about November 11, 1937, because Fuel failed to pay for the gas. At that time Fuel's gas bills exceeded \$1,100 and its bills were unpaid since the middle of August. At no time thereafter did Fuel operate its gas distribution

system. At the time Fuel ceased operating its gas system it had about 10 customers.

In November 1937 Fuel applied to the Railroad Commission of California for permission to temporarily discontinue its service in Kings County. Permission was granted by the Commission on January 3, 1938. In its opinion the Commission pointed out that the tremendous line losses sustained by Fuel¹ "is entirely inexcusable and indicates gross inefficiency on the part of the applicant in the maintenance of its facilities." Fuel was ordered to complete repairs to its lines and facilities as soon as possible and to file progress reports with the Commission at the end of each 30 days. Fuel estimated that the repairs could be made in from 60 to 120 days at a cost of \$2,000.

Fuel notified Shell Oil Company, by letter dated June 2, 1937, of the destruction of its gas supply by the acts of the latter's employees and demanded satisfaction from Shell. The extent and the nature of the negotiations with Shell are undisclosed but petitioner's account with Central shows a credit of \$1,900 on the latter's indebtedness under date of June 3, 1938 which represented an amount received in settlement of Fuel's controversy with Shell.

No attempt was made by Fuel to repair its gas distribution system. Floods in 1938 further dam-

¹Fuel showed the Commission that it purchased 2,614,000 cubic feet of gas from Southern California Gas Company during October, 1937, while sales to its customers totaled 422,341 cubic feet, the difference being attributed to line losses.

aged the lines with the result that in 1939 Fuel sold the pipe and all of its other physical assets. It sold its pipe lines for about \$2,500, the purchaser agreeing to pay Fuel's taxes and turn over the receipted tax bill with his check for the difference. Central's account with petitioner shows that the difference amounted to \$832.19, which was credited on petitioner's books, April 30, 1940. Fuel turned over its regulators, meters and a Chevrolet truck to one of its employees in satisfaction of unpaid wages. After disposing of these assets Fuel's sole remaining asset was its certificate of public convenience and necessity.

By December 1, 1939, Kettleman was without property of any kind whatsoever and never thereafter acquired, owned or held any property.

On or about January 6, 1940, the corporate charters of Central, Fuel and Kettleman were suspended by the Secretary of State of California for failure to pay the State franchise tax. At all times thereafter these charters were suspended.

Negotiations looking forward to securing a supply of gas for Fuel were conducted by Moore with various individuals and oil companies during 1937 and thereafter. Moore's early negotiations were based upon the purchaser supplying the gas only; his later negotiations were based upon the purchaser supplying the gas and a new pipe line system for distribution. By December 31, 1940 all of these negotiations had proved fruitless. On March 25, 1941, and in August, 1941 he wrote letters to two separate

individuals seeking unsuccessfully to interest them, their associates, or their clients in the project.

During the interim between January 3, 1938, (when Fuel was permitted temporarily to suspend its service) and October 6, 1942, the Railroad Commission repeatedly called upon Fuel to advise it when Fuel would resume service. Fuel or Central gave the Commission various reasons for its failure to resume service to its customers. On October 8, 1938, the Commission was advised that the flooded condition of the land indicated that it would be well into the year 1939 before flood waters receded to a point where customers would require resumption of service for water pumping. In August, 1939, and in June, 1940, the Commission was advised that there was still no demand for gas for water-pumping purposes. On March 17, 1941, the Commission advised Central that if it intended to abandon service in its territory a formal application to the Commission should be made. On March 25, 1941, Central replied that negotiations were under way looking forward to possible resumption of service, but that if the negotiations were not successfully concluded the abandonment of the "franchise" held by Fuel would be taken up with the Commission. From October 15, 1941, to May 22, 1942, inclusive, the Railroad Commission wrote Central at least five letters requesting information about the status of Fuel and when service to its customers would be resumed. On June 9, 1942, the Commission was advised that Fuel "is no longer operating, having

been inactive for the past three years." By order dated October 6, 1942, the Railroad Commission revoked Fuel's certificate and referred in its opinion to Fuel's letter of June 9, 1942 as one of the reasons for the revocation.

In a letter to Moore on November 22, 1940, the Internal Revenue Agent in charge in Los Angeles stated that certain stockholders of Central had claimed that their stock became worthless in 1939. Moore was requested to "furnish information covering any event which in your opinion rendered the stock worthless. It is noted that the balance sheet of December 31, 1939 shows stock in subsidiaries, \$1,124,507.49." In his reply, dated December 2, 1940, Moore stated that the stock value of \$1,124,507.49 represented the book value of Fuel and Kettleman, wholly owned subsidiaries; that Central had no assets other than the stock of its subsidiaries; that the subsidiaries had no assets of any nature except the "questionable value of its certificate of public necessity"; that the value thereof was commensurate with whatever profit Fuel "might be able to earn from its operations, all of which now are suspended," and that it was his personal opinion as principal officer of the three corporations "that their stock became practically worthless in the early part of 1939."

The income tax returns of Kettleman, Fuel, Central and petitioner for the taxable years of 1936 to

1939, inclusive, show losses for each taxable year by each corporation.² The income tax returns for 1940 of Kettleman, Fuel and Central each contain the following statement: "Corporation dormant for past two years. No transactions of any nature in 1940. Corporate franchise cancelled for non-payment of state franchise in 1938." Petitioner's income tax returns for 1940 to 1943, inclusive, show losses as follows:

1940	\$ 7,082.40
1941	30.50
1942*	49,198.79
1943*	23,012.20

*Consolidated return filed with A. & W. Baking Company.

During 1937 petitioner invested in two other business enterprises in addition to Central. These investments were in Timm Aircraft Company and Ful-Ton Truck Company. Petitioner disposed of its investment in Timm Aircraft in 1942 at a profit of \$5,650. Its investment in Ful-Ton Truck Company evolved eventually into its wholly owned subsidiary, the A. & W. Bakery Company, a wholesale bakery. Petitioner continued to finance the Aircraft Company and the Bakery Company after it ceased financing Central.

²No tax return for Kettleman for 1937 was placed in evidence.

The indebtedness of Central to petitioner and the stock owned by petitioner in Central became worthless prior to January 1, 1942.

Opinion

The principal question is whether petitioner sustained a net operating loss in 1942. There is no dispute about the deductibility of such a loss in 1943 if in fact a loss was sustained subsequent to January 1, 1942. Whether petitioner had a net operating loss in 1942 depends upon whether an indebtedness of Central became worthless in that year and also whether certain shares of stock of Central became worthless in 1942. Respondent determined that the indebtedness and the stock became worthless prior to 1942.

Petitioner contends that the preliminary financing of Central was one of the purposes for which it was organized; that at the time the loans were made such loans had a potential value but no real, liquidating, actual or intrinsic value because the debtor had insufficient assets from which to obtain repayment; that petitioner knew this, but nevertheless made the loan, purely as a business proposition, expecting repayment (and a profit on a large block of Central's promotional stock) only from the revived and expanded activities of the debtor which were to be touched off by the expenditure of the money advanced; that while the loan did not actually touch off the revived and expanded activities as planned, the activities continued to be very much

in prospect until war conditions developed in 1942; and, therefore, that at all times to 1942 there was a substantial potential value existing in Central's indebtedness and stock.

We can not agree with petitioner. The facts show that long prior to 1942 the promoters of Central had given up all real hope of continuing this venture. Their efforts to secure a supply of gas from their own wells failed in or prior to 1937. Their remaining source of supply was destroyed in May, 1937 by the geophysical tests conducted by Shell. Their purchasing agreement with Southern California Gas Company was terminated November 11, 1937 because of failure to pay for the gas purchased since the middle of August, 1937. After November 11, 1937, Central never had a supply of gas for its customers. On January 3, 1938, the Railroad Commission permitted temporary suspension of service to customers upon the representation that repairs to the distribution system could be completed in 60 to 120 days at a cost of \$2,000. The repairs were never made. It is reasonable to assume that any intention to make the repairs that might have existed when the representations were made to the Railroad Commission was wiped out with the floods in Fuel's territory in 1938. Instead of making repairs to its distribution system, Fuel disposed of its pipe line and other physical assets. By the end of 1939 Fuel had no assets except its certificate of public convenience and necessity, and Kettleman had no assets whatever. On January 6, 1940 the

corporate charters of Fuel, Kettleman and Central were suspended and never thereafter revived.

At January 31, 1940, petitioner had an investment in Central of \$32,400 in loans and \$1,300 in stock. Central held as its sole assets the capital stock of Fuel and Kettleman. The latter corporations had as their sole asset the certificate owned by Fuel. The charters of all three corporations were suspended and losses had been sustained each year of operation. Before gas service could be resumed a new distribution system had to be purchased and installed and a supply of gas obtained. A new distribution system would have required an outlay of funds greatly in excess of the estimated cost of repairs or the accumulated gas bills on Fuel's purchasing agreement, both of which petitioner refused to finance. The testimony indicates that petitioner preferred to finance its other enterprises because the opportunities for profit were much better.

Thus it appears that at least by April 30, 1940, petitioner had made its election and that the Central project was abandoned insofar as any additional investment of funds was concerned. It is clear too that by the end of 1940 all negotiations for disposition of the certificate had failed. The so-called negotiations in 1941 were nothing more than feelers to see if any interest could be aroused. The potential value which petitioner contends continued to exist until revocation of the certificate in October, 1942 was nothing more than wishful thinking. The

certificate could have been revoked at any time subsequent to 1939.³ One of the promoters of the project had already expressed the opinion in writing on December 2, 1940 that the stock of Central "became practically worthless in the early part of 1939." If the stock was practically worthless early in 1939 the indebtedness of Central to petitioner must have also been worthless. Certainly by the end of 1940 petitioner had nothing upon which to rely except the faint hope that some financial "angel" would purchase the certificate for at least \$32,867.81 (\$31,567.81 plus \$1,300). We can not believe that the ordinary prudent man would have considered the indebtedness or the stock investment as having value at January 1, 1942. On this issue we affirm the respondent.

In so deciding we have considered the authorities cited in the respective briefs. But, since this case must be decided, in the last analysis, upon its own particular facts, we have not relied upon any decided case, electing instead to base our decision upon

³Fuel was granted the certificate upon its representation that it would construct and operate a gas distributing system. The Railroad Commission expressly reserved, however, the right to revoke or limit the authorization as to territory not being served. Fuel ceased serving its customers November 11, 1937. It secured a temporary suspension of service on January 3, 1938 to complete within 60 to 120 days repairs to its pipe lines. Instead of making the repairs, Fuel sold its pipe line system and by the end of 1939 had no facilities whatsoever with which to serve its territory.

the findings of fact hereinabove set forth, which were made after carefully weighing the evidence in the light of the findings requested by both parties.

The remaining issue is whether petitioner can carry over a 1941 net operating loss and deduct it from its 1943 consolidated net income. Petitioner filed a separate return in 1941, and it had no income in 1943 which was included in the consolidated return filed for 1943. Under such circumstances section 23.31 (d) (3) of Regulations 104 provides that the net operating loss carry-over from a separate return year shall not exceed the sum of the corporate net income included in the consolidated net income tax year plus separate net capital gain of the consolidated income tax year. The stipulated facts show that petitioner had no net income for 1943 so that the limitation contained in the regulations, which petitioner accepted by filing the consolidated return, prevents any part of the 1941 net operating loss from being carried over as a deduction against 1943 consolidated net income. On this issue, too, we sustain the respondent.

Decision will be entered for the respondent.

[Seal]

Entered and served May 10, 1949.

Received May 6, 1949.

The Tax Court of the United States, Washington

Docket No. 13562

CAPITAL SERVICE, INC.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered May 10, 1949, it is

Ordered and Decided: That there is a deficiency in income tax of \$7,358.10 for the calendar year 1943.

[Seal] /s/ WILLIAM W. ARNOLD,

Judge.

Entered May 12, 1949.

Served May 13, 1949.

[Title of Tax Court and Cause.]

PETITION FOR REVIEW OF A DECISION
OF THE TAX COURT OF THE UNITED
STATES BY THE UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT

I.

Jurisdiction

Capital Service, Inc., your petitioner, respectfully petitions the Honorable United States Court of Appeals for the Ninth Circuit to review the decision of the Tax Court of the United States entered on May 12, 1949, which finds a deficiency in income tax due from your petitioner for the calendar year of 1943, in the amount of \$7,358.10.

Your petitioner is a corporation organized under the laws of the State of California, having its principal office and place of business at 510 South Spring Street, Los Angeles 13, California.

The return of income tax in respect of which the aforementioned tax liability arose was filed by your petitioner with the Collector of Internal Revenue for the Sixth Collection District of California, located in the City of Los Angeles, State of California, which is located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Jurisdiction of the United States Court of Appeals for the Ninth Circuit to review the decision of the Tax Court of the United States aforesaid is

founded on Section 1141 of the Internal Revenue Code (26 U.S.C.A., section 1141).

II.

Nature of the Controversy

Petitioner is a California corporation incorporated under the laws of the State of California on April 23, 1936, with its principal office and place of business at 510 South Spring Street, Los Angeles 13, California. Petitioner and petitioner's subsidiary, the A & W Baking Co. (name changed to Danish Maid Bakery), filed consolidated income tax returns with the Collector of Internal Revenue for the Sixth District of California for the calendar years 1942 and 1943.

Reflected in the computation of the 1942 net operating loss of petitioner were deductions of \$31,-567.81, and \$1,300.00 representing, respectively, the worthlessness of an indebtedness owed to petitioner by, and stock held by petitioner in, Central California Public Utilities Corporation.

This case involves an income tax deficiency asserted against petitioner for the calendar year of 1943 in the amount of \$7,358.10.

The principal issue is whether petitioner sustained in the calendar year 1942 a net operating loss that could be carried over and used as a net operating loss deduction for the calendar year 1943.

The determination of the principal issue will turn upon whether it is held that the indebtedness owed to petitioner by, and the stock held by petitioner in,

said Central California Utilities Corporation became worthless during the calendar year 1942, as contended by petitioner, or prior to the beginning of said calendar year 1942 as determined by the Commissioner of Internal Revenue. The Tax Court of the United States affirmed the Commissioner of Internal Revenue on this issue.

/s/ HYMAN SMITH,

Attorney for Petitioner.

State of California,
County of Los Angeles—ss.

Hyman Smith, being duly sworn, says:

I am the attorney for the petitioner in this proceeding; I prepared the foregoing petition and am familiar with the contents thereof. The allegations of fact contained there are true to the best of my knowledge, information, and belief. This petition is not filed for the purpose of delay, and I believe the petitioner is justly entitled to the relief sought.

/s/ HYMAN SMITH,

Subscribed and sworn to before me this 14th day of June, 1949.

[Seal] /s/ WILLIAM M. CRANDALL,

Notary Public in and for the County of Los Angeles, State of California.

Received and filed June 19, 1949, T.C.U.S.

[Title of Tax Court and Cause.]

NOTICE OF PETITION FOR REVIEW

To: Commissioner of Internal Revenue, Washington, D. C.; Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C., Attorney for Respondent,

You Are Hereby Notified that on or about the 15th day of June, 1949, a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States heretofore rendered in the above-entitled cause, was filed with the Clerk of Tax Court of the United States. A copy of the petition as filed is attached hereto and served upon you.

Dated June 17, 1949.

/s/ HYMAN SMITH,
Attorney for Petitioner.

State of California,
County of Los Angeles—ss.

Clemence Bowman, being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above-entitled action; that affiant's business address is 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California; that on the 17th day of June, 1949, affiant served the hereinabove notice on the attorney

for the Commissioner of Internal Revenue, Respondent in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Commissioner of Internal Revenue, Respondent, at the office address of said attorney as follows: "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made. That there is delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ CLEMENCE BOWMAN.

Subscribed and sworn to before me this 17th day of June, 1949.

[Seal] /s/ E. O. LEAKE,

Notary Public in and for the County of Los Angeles, State of California.

Received and filed June 20, 1949, T.C.U.S.

[Title of Tax Court and Cause.]

MOTION TO SUBSTITUTE COUNSEL

Comes now Petitioner, and respectfully shows:

That it desires to withdraw James L. Wood, Esquire, as Counsel of record herein, and to substitute Hyman Smith, Esquire, as Counsel of record;

That notice of said change of counsel of record has been given to said James L. Wood.

That the said Hyman Smith is duly admitted to practice before the above Honorable Tax Court of the United States.

That the address of the said Hyman Smith is 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California.

Wherefore, Petitioner respectfully requests leave of this Court to withdraw James L. Wood, Esquire, as Counsel of record herein, and to substitute Hyman Smith, Esquire, of 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California, as Counsel of record herein.

CAPITAL SERVICE, INC.

[Seal] /s/ M. B. PRICE,
Vice President, Petitioner.

I hereby agree to the foregoing substitution.

/s/ JAMES L. WOOD.

June 27th, 1949.

I, Hyman Smith, do hereby certify that I am duly admitted to practice before the Honorable Tax

Court of the United States and do hereby accept the foregoing substitution. I further certify that my mailing address is 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California.

/s/ HYMAN SMITH.

June 27th, 1949.

Received and filed June 29, 1949, T.C.U.S.

Granted June 29, 1949.

/s/ BOLON B. TURNER,
Judge.

[Title of Tax Court and Cause.]

DESIGNATION OF RECORD, PROCEEDINGS
AND EVIDENCE TO BE CONTAINED IN
RECORD ON REVIEW PURSUANT TO
RULE 75 OF FEDERAL RULES OF CIVIL
PROCEDURE

To the Clerk of the Tax Court of the United States:

You Will Please Take Notice that petitioner and appellant, Capital Service, Inc., hereby designates for inclusion in the record on review in the above-entitled action, the complete record and all of the proceedings and evidence in the said action including the Judgment Roll, transcript of all testimony and other evidence and exhibits in the action.

The above notice is in accordance with Rule 75 of the Federal Rules of Civil Procedure.

Dated: June 14th, 1949.

/s/ HYMAN SMITH,
Attorney for Petitioner and Appellant, Capital
Service, Inc.

State of California,
County of Los Angeles—ss.

Clemence Bowman, being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above-entitled action; that affiant's business address is 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California; that on the 14th day of June, 1949, affiant served the hereinabove "Designation of Record, Proceedings and Evidence to Be Contained in Record on Review Pursuant to Rule 75 of Federal Rules of Civil Procedure" on the attorney for the Commissioner of Internal Revenue, Respondent in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Commissioner of Internal Revenue, Respondent, at the office address of said attorney as follows: "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States

Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made. That there is delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ CLEMENCE BOWMAN.

Subscribed and sworn to before me this 14th day of June, 1949.

/s/ WILLIAM M. CRANDALL,

Notary Public in and for the County of Los Angeles, State of California.

Received and filed June 15, 1949, T.C.U.S.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 29, inclusive, constitute and are all of the original papers and proceedings on file in my office as the original and complete record in the proceeding before The Tax Court of the United States entitled "Capital Service, Inc., a corporation, Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 13562, and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and enti-

tled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 19th day of July, 1949.

[Seal) /s/ VICTOR S. MERSCH,
Clerk.

[Endorsed]: No. 12302. United States Circuit Court of Appeals for the Ninth Circuit. Capital Service, Inc., a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed July 25, 1949.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

CCA No. 12302

CAPITAL SERVICE, INC., a Corporation,
Appellant,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

STATEMENT OF POINTS ON APPEAL

Comes Now the appellant, Capital Service, Inc., a corporation, and hereby states that it intends to rely on the points hereinbelow set forth in its appeal from the decision of the Tax Court of the United States to the United States Court of Appeals for the Ninth Circuit, to wit:

(1) The Tax Court of the United States erred in holding that petitioner's stock investment in and loan to the Central California Utilities Corporation became worthless prior to 1942.

(2) The Tax Court of the United States erred in holding that Petitioner-Appellant is not entitled to deduct in 1943 a net operating loss carry-over from 1942.

(3) The Tax Court of the United States erred in holding that Petitioner-Appellant is not entitled to carry over its 1941 net operating loss and to deduct from 1943 consolidated net income.

(4) The Tax Court of the United States erred in

holding that the certificate of public convenience and necessity issued by the Railroad Commission of California to Gas Fuel Service Company became worthless prior to 1942.

(5) The Tax Court of the United States erred in holding that Gas Fuel Service Company had no assets in 1942.

(6) The Tax Court of the United States erred in failing to hold that prior to the surrender of the certificate of convenience and necessity Gas Fuel Service Company stock was not worthless, and in failing to hold that said stock first became worthless upon the surrender of said certificate of convenience and necessity in 1942.

(7) The Tax Court of the United States erred in failing to hold that Petitioner-Appellant sustained a net operating loss in 1942.

(8) The Tax Court of the United States erred in relying upon an opinion of "one of the promoters of the project" as to the alleged worthlessness of certain stock.

(9) The Tax Court of the United States erred in admitting in evidence hearsay and opinion evidence.

(10) The Tax Court of the United States erred in its rulings as to the admissibility of evidence.

(11) The Tax Court of the United States erred in its findings of fact.

(12) The Tax Court of the United States erred in its conclusions of law.

(13) The Tax Court of the United States erred in its decision.

Dated: Los Angeles, California, August 11, 1949.

HYMAN SMITH and
WILLIAM STRONG.

By /s/ HYMAN SMITH,
Attorneys for Appellant.

State of California,
County of Los Angeles—ss.

Barnet M. Cooperman being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above-entitled action; that affiant's business address is 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California; that on the 11th day of August, 1949, affiant served within Statement of Points on Appeal on the Respondent and Attorneys for Respondent, Commissioner of Internal Revenue, in said action, by placing true copies thereof in envelopes addressed to the Respondent and the attorney of record for said Respondent, at the office addresses of said Respondent and attorneys as follows: "Commissioner of Internal Revenue, Washington 25, D. C."; "Thereon L. Caudle, Assistant Attorney General, Department of Justice, Washington, 25,

D. C.”; “Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington 25, D. C.,” and then sealing said envelopes and depositing the same, with postage thereon fully prepaid in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made. That there is delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ BARNET M. COOPERMAN.

Subscribed and sworn to before me this 11th day of August, 1949.

[Seal] /s/ HYMAN SMITH,

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires April 25, 1950.

[Endorsed]: Filed Aug. 13, 1949, U.S.C.A.

[Title of Court of Appeals and Cause.]

AMENDED DESIGNATION OF RECORD FOR PRINTING ON APPEAL

Comes Now the appellant, Capital Service, Inc., a corporation, and hereby designates for inclusion in the printed record on review in the above-entitled action the entire and complete record and all of the exhibits and proceedings therein excepting and excluding the following:

(a) Respondent's exhibits I and J, which are respectively a letter from an Internal Revenue Agent dated November 22, 1940, and the reply thereto written by R. W. Moore, dated December 2, 1940.

(b) Respondent's exhibits N, O, P and Q which are the Corporate Income Tax Returns of Kettleman-Lakeview Oil and Gas Co., Ltd., for 1936, 1938, 1939 and 1940.

(c) Respondent's exhibits R, S, T, U and V which are the Corporate Income and Excess Profits Tax Returns of Central California Utilities Co. for the calendar years 1936 through 1940, inclusive.

(d) Respondent's Exhibits W, X, Y, Z, AA, BB, CC and DD, which are the Corporate Income and Excess Profits Tax Returns of Capital Service, Inc., for the years 1936 through 1943, inclusive.

(e) Respondent's exhibits EE, FF, GG, HH and II, which are the Income Tax Returns of the Gas Fuel Service Co. for the years 1936 through 1940, inclusive.

(f) All briefs submitted to the Tax Court of the United States by the parties herein.

Dated: Los Angeles, California, August 11, 1949.

HYMAN SMITH and
WILLIAM STRONG,

By /s/ WILLIAM STRONG,
Attorneys for Appellant, Capital Service, Inc., a
Corporation.

State of California,
County of Los Angeles—ss.

Barnet M. Cooperman being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above-entitled action; that affiant's business address is 923 Chester Williams Building, 215 West 5th Street, Los Angeles 13, California; that on the 11th day of August, 1949, affiant served the within amended Designation of Record for Printing on Appeal on the Respondent and Attorneys for Respondent, Commissioner of Internal Revenue, in said action, by placing true copies thereof in envelopes addressed to the Respondent and the attorneys of record for said Respondent, at the office addresses of said Respondent and attorneys as follows: "Commissioner of Internal Revenue, Washington 25, D. C."; "Thereon L. Caudle, Assistant Attorney General, Department of Justice, Washington 25, D. C."; "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington 25, D. C.," and then sealing said envelopes and depositing the same, with postage thereon fully prepaid in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made. That there is delivery service by the United States mail at the place so ad-

dressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ BARNET M. COOPERMAN.

Subscribed and sworn to before me this 11th day of August, 1949.

[Seal] /s/ HYMAN SMITH,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires April 25, 1950.

[Endorsed]: Filed Aug. 13, 1949.

[Title of Court of Appeals and Cause.]

SUPPLEMENT TO AMENDED DESIGNATION
OF RECORD FOR PRINTING ON
APPEAL

Comes Now the appellant, Capital Service, Inc., a corporation, and hereby supplements its Amended Designation of Record for Printing on Appeal in the above-entitled action by adding thereto respondent's exhibits I and J which are respectively a letter from an Internal Revenue agent dated November 22, 1940, and the reply thereto written by R. W. Moore, dated December 2, 1940.

Appellant, Capital Service, Inc., a corporation, now instructs the clerk of the above-entitled court to include in the printed record on review in the

above-entitled action respondent's said exhibits I and J described hereinabove.

Dated, Los Angeles, California, August 29, 1949.

HYMAN SMITH and
WILLIAM STRONG.

By /s/ HYMAN SMITH,
Attorneys for Appellant.

State of California,
County of Los Angeles—ss.

Barnet M. Cooperman, being first duly sworn, says: that affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above-entitled action; that affiant's business address is 923 Chester Williams Building, 215 West Fifth Street, Los Angeles 13, California; that on the 29th day of August, 1949, affiant served the within Supplement to Amended Designation of Record for Printing on Appeal on the Respondent and Attorneys for Respondent, Commissioner of Internal Revenue, in said action, by placing true copies thereof in envelopes addressed to the Respondent and the attorneys of record for said Respondent, at the office addresses of said Respondent and attorneys as follows: "Commissioner of Internal Revenue, Washington 25, D. C."; "Thereon L. Caudle, Assistant Attorney General, Department of Justice, Washington 25, D. C."; "Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington 25, D. C.," and

then sealing said envelopes and depositing the same, with postage thereon fully prepaid in the United States Post Office at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made. That there is a delivery service by the United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ BARNET M. COOPERMAN.

Subscribed and sworn to before me this 29th day of August, 1949.

[Seal] /s/ HYMAN SMITH,
Notary Public in and for the County of Los Angeles, State of California.

My Commission expires April 25, 1950.

[Endorsed]: Filed Aug. 31, 1949.

PAUL P. O'BRIEN,
Clerk.